TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~202.~~ 94

THE STEAMSHIP "THAMES," HER TACKLE, ETC., RUSSELL STURGIS ET AL., CLAIMANTS, APPELLANTS,

vs.

BILLOPP SEAMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 17, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 292.

THE STEAMSHIP "THAMES," HER TACKLE, ETC., RUSSELL STURGIS ET AL., CLAIMANTS, APPELLANTS,

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a UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 134, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Billopp Seaman, libellant & appellee, against the steamship "Thames," her tackle, apparel, &c., cl'm'ts & appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 12 day of Nov., in the year of our Lord, one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-cent int. rev. stamp affixed and canceled.]

1 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Monday, the seventh day of June, in the year of our Lord one thousand eight hundred and nine:

Present, the Honorable Samuel Blatchford, district judge.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," HER TACKLE, apparel, &c. } 22—101.

1868, MARCH 19TH. The libellant files his libel against the steamship "Thames," her engines, tackle, apparel, &c., &c., in the words and figures following, to wit:

2 (Indorsed:) Vol. ——, No. ——. United States district court for the southern district of New York. Order. proctor for . Filed the day of , 18 .

3 In admiralty.

To the judge of the district court of the United States for the southern district of New York:

Billopp Seaman, of the city and State of New York, exhibits this his libel in a cause of contract, civil and maritime, against the steamship or vessel "Thames," now lying at the port of New York, in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, whereof L. W. Pennington now is, or lately was, master, her engines, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, and thereupon the said Billopp Seaman doth allege, articulately propound, as follows, to wit:

First. That, on or about the twenty-eighth day of January, 1868, the said steamship or vessel "Thames," whereof the said L. W. Pennington was master, being then in the port of Savannah, and designed on a

voyage on the high seas, and on waters within the admiralty, and
4 maritime jurisdiction of the United States and of this honorable court, to wit, from the said port of Savannah to the said port of New York, one Gilbert S. Van Pelt being the owner of one hundred & eleven bales of cotton, of the value of over eleven thousand dollars, made a contract with the master, purser, or agent of said vessel, whereby he agreed, in consideration of certain freight, to convey the said cotton from the said port of Savannah to the said port of New York, and there to deliver the same in good order and condition at the said port of New York, the dangers of the seas, restraints of Government, collisions, fire at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatsoever kind excepted, and with liberty to sail with or without pilots, and to tow or assist vessels in all situations, unto order, or to his or their assigns; and that thereupon the said Gilbert S. Van Pelt delivered to the said master, purser, or agent of said vessel the said cotton in
5 good order; and the said master, purser, or agent of said vessel affirmed to three bills of lading for such cotton, all of the same tenor and date, and delivered two of the same to said Gilbert S. Van Pelt, and retained the other, to which said bills of lading (a true copy *of* whereof is hereto annexed) the libellant prays leave for greater certainty, to refer; that afterwards, and on or about the said twenty-eighth day of January, 1868, the said Gilbert S. Van Pelt endorsed and assigned both the said bills of lading, so delivered to him as aforesaid, to the libellant for a valuable consideration, whereby the libellant became the lawful owner of said cotton and of the bills of lading representing the same, a copy of which said bills of lading is hereunto annexed.

Second. That the said steamship shortly afterwards departed on her said voyage, but the said master, purser, or agent of said vessel, not regarding his duty in that respect, nor his promise and undertaking to convey said cotton, and to deliver the same to the libellant as indorsee of said bills of lading as aforesaid, (although none of the dangers,
6 restraints, or accidents mentioned and referred to in said contract and bill of lading prevented him from so doing,) wilfully and wrongfully refuses to deliver up the said cotton to the libellant, although often requested so to do. By reason whereof the libellant has sustained damage to the amount of eight thousand dollars, for which he claims reparation in this suit.

Third. That all and singular the premises are true.

Wherefore the libellant prays that process in due form of law may issue against the said steamship "Thames," her engines, boats, tackle, apparel, and furniture, and that this honorable court will pronounce for his aforesaid demand, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises, and that the said vessel may be sold, if necessary, to pay the sum that may be awarded to the libellant.

BILLOPP SEAMAN.

B. F. LEE, Jr., *Proctor.*

7 On the 19th day of March, 1868, appeared personally Billopp Seaman, the above-named libellant, and was sworn to the truth of the foregoing libel, before me.

JOHN A. OSBORN,
U. S. Comm'r.

Copy of bills of lading referred to in the foregoing libel.

New York office, cor. of Cedar and West sts.
Marks and numbers.
G. 41 B|C 19844
V. 58 " 29382
P. 12 " 6391
111 B|C 55617 lbs.
Freight.
Advance charges.
Total.

Black Star line, Savannah and New York, Octavus Cohen & Co., agents Savannah, R. Louden, agent New York.

Shipped by G. S. Van Pelt in good order on board steamship "Thames," whereof is master, now lying in the port of Savannah, Ga., and bound for New York, to say: One hundred and eleven (111) bales cotton, being marked and numbered as per margin, to be delivered in like good order and condition at the aforesaid port of New York, the dangers of the seas, restraints of Government, collisions, fire at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, or steam navigation of whatsoever nature or kind excepted; and with liberty to sail with or without pilots, and to tow and assist vessels
8 in all situations unto order, or to his or their assigns, he or they paying freight one cent, with average accustomed, as per margin.

It is expressly understood that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer at her port of destination, and they shall be received by the consignee thereof, package by package, as so delivered, and if not taken away the same day by him, they may, at the option of the steamer's agent, be sent to store, or permitted to lay where landed at the expense and risk of the aforesaid owner, shipper, or consignee—weight, contents, and value unknown—and not accountable for leakages, rust, or breakages, if properly stowed. Neither the ship or owners will be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, unless bills of lading, *and* signed therefore, and the value therein expressed. No bill of lading signed for less than $1 00.

In witness whereof the master, purser, or agent, of said vessel hath affirmed to three (3) bills of lading, all of this tenor and date,
9 one of which being accomplished the others to stand void.

Dated in Savannah this 28th day of January, 1868.

(S'g'd) O. COHEN & CO.,
For Octavus Cohen & Co., Agents.

(Endorsement:)
"Deliver B. Seaman, cashier, or order."

G. S. VAN PELT.

10 (Indorsed:) 22—101. In the United States district court, southern district of New York. Billopp Seaman ag'st the "Thames." Libel. Filed March 19, 1868. B. F. Lee jr., proctor.

11 *Stipulation for libellants costs, entered into pursuant to the rules and practice of this court.—Filed the 19th day of March,* 1868.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 19th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by Billopp Seaman, against the steamship "Thames," her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that

said steamship may be condemned and sold to pay demands of libellant; and the said libellant and James F. Wenman & Emerson Coleman, sureties, parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or his sureties, execution may be issued against their goods, chattles, and land, for the sum of two hundred & fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or, in case of appeal, by the appellate court.

BILLOPP SEAMAN.
JA'S F. WENMAN.
EMERSON COLEMAN.

Taken and acknowledged this 19 day of March, 1868, before me.
JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James F. Wenman & Emerson Coleman, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JA'S F. WENMAN,
EMERSON COLEMAN.

Sworn this 19 day of March, 1868, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 19 day of March, 1868.
——— ———, *Clerk.*

12

13 SOUTHERN DISTRICT OF NEW YORK, *ss:*

[L. S.] The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York on the 19 day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by Billopp Seaman vs. The Steamship "Thames"—non-delivery of goods—$8,500 00—for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship, or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer

of said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 7 day of April next at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York in the southern district of New York, this 19th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-second.

GEO. F. BETTS, *Clerk.*

B. F. LEE, Jr.,
Proctor for Libellant.

14 (Indorsed:) Vol. 22, page 101. Southern district of New York, United States district court. Billopp Seaman vs. The Steamship "Thames," &c. Monition ret'ble April 7, 1868. B. F. Lee, jr., proctor for libellant. Filed April 7th, 1868.

I hereby depute L. Bates to execute the within process.
Dated M'ch 19, 1868.

R. MURRAY,
U. S. Marshal.

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In obedience to the within monition I attached the st'ship "Thames," &c., therein described, on the 20th day of March, 1868, and have given due notice to all persons claiming the same that this court will, on the 7 day of April, inst., (if that day should be a day of jurisdiction, if not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated April 7, 1868.
Pier 13. N. R.

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Thursday, the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

THE STEAMSHIP "THAMES," &c.
asm.
BILLOPP SEAMAN.

And now Russell Sturgis, part owner of the steamship "Thames," intervening for the interest of himself and others in the said steamship, appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Billopp Seaman; and the said Russell Sturgis avers that himself & others were, as such owners, in possession of

the said steamship at the time of the attachment thereof, and that they are the true and bona fide owners of the said steamship, and that no other person is the owner thereof; wherefore they pray to defend accordingly.

RUSSELL STURGIS.

Sworn to and subscribed this seventh day of May, A. D. 1868, before me.

GEO. F. BETTS,
U. S. Commissioner.

BARNEY, BUTLER & PARSONS,
Proctors for Claimants.

16 (Indorsed:) Vol. 22. No. 101. United States district court for the southern district of New York. The St'ship "Thames," &c., asm. Billopp Seaman. Barney, Butler & Parsons, proctors for claimants. Claim of owners . Filed the seventh day of May, 1868.

17 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 7 day of May, 1868.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court, on the 19th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by Billopp Seaman against The St'ship "Thames," &c., for the reasons and causes in the said libel mentioned, and praying that said st'ship, &c., may be condemned & sold to pay the demands of lib't and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by Russell Sturgis, part owner, for himself & other owners:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the cl'ts above named, shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

RUSSELL STURGIS,
For self & others, Claimants.
RUSSELL STURGIS.
GEO. W. BLUNT.

Taken and acknowledged this 7th day of May, 1868, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Russell Sturgis & George W. Blunt, parties to the above stipulation, being duly sworn, doth each depose and say that he resides in the

southern district of New York, & that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

RUSSELL STURGIS.
GEO. W. BLUNT.

Sworn to this 7th day of May, 1868, before me.

GEO. F. BETTS,
U. S. Commissioner.

Recorded the 7th day of May, 1868.

GEO. F. BETTS, *Clerk.*

18

19 Bond to marshal. Act of Congress, March 3, 1847.]

District court of the United States of America for the southern district of New York.

[Filed the 7th day of May, 1868.]

Know all men by these presents that we, Russell Sturgis & George W. Blunt, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of seventeen thousand dollars, to be paid to the said Robert Murray, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the seventh day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 19th day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by Billopp Seaman, libellant, against The St'ship Thames, &c., for the sum of eight thousand five hundred dollars, on which process of attachment has issued, and the said st'ship, &c., is in custody of the marshal under the said attachment, and Russell Sturgis, part owner, has applied for a discharge of said st'ship, &c., from the custody of the marshal, and has filed a claim claiming the said st'ship, &c., as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such that if the above-bounden Russell Sturgis & George W. Blunt shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RUSSELL STURGIS,
For self & other Claimants.
RUSSELL STURGIS.
GEO. W. BLUNT.

Sealed and delivered and taken and acknowledged this 7th day of May, 1868, before me.

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Russell Sturgis & George W. Blunt, being duly sworn, each depose and say that he resides in the southern district of New York, &c., & that he is worth the sum of seventeen thousand dollars over and above all his just debts and liabilities.

RUSSELL STURGIS.
GEO. W. BLUNT.

Sworn to this 7th day of May, A. D. 1868, before me.

GEO. F. BETTS,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 7th day of May, 1868.

SAM'L BLATCHFORD, *D. J.*

MAY 8, '68.

Approved:

B. F. LEE, JR.,
Proctor for Libellant.

Recorded the 7th day of May, 1868.

20

21 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Friday, the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

THE ST'SHIP "THAMES," &C., *ads.* BILLOPP SEAMAN. } 22—101.

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge, on motion of Barney, Butler & Parsons, proctors for the claimants, it is ordered that the appearance of the claimants be, & the same is hereby, entered, and that a copy of this order be delivered to the marshal.

22 (Indorsed:) Vol. 22. No. 101. United States district court for the southern district of New York. The St'ship "Thames," &c., ads. Billopp Seaman. Order to marshal to discharge vessel. Barney, Butler & Parsons, proctors for cl'm'ts. Filed the eighth day of May, 1868.

23 District court of the United States for the southern district of New York.—In admiralty.

To the Honorable Samuel Blatchford, judge of the district court for the southern district of New York:

The claim and answer of Russell Sturgis, Henry W. Hubbell, O. De

Forest Grant, and Robert L. Taylor, owners of the steamship or vessel called the "Thames," intervening for their interest in the said steamship, for answer to the libel of Billopp Seaman against said vessel, her tackle, apparel, and furniture, alleges as follows:

First. The said claimants are the owners of said steamboat, her tackle, apparel, and furniture. They deny any knowledge or information sufficient to form a belief touching the ownership of the one hundred and eleven bales of cotton mentioned and referred to in the said libel, and described in the bill of lading, a copy of which is annexed to the said libel; and they also deny any knowledge or information sufficient to form a belief touching the allegations in said libel contained in
24 respect to the endorsement, delivery, or transfer of the said bill of lading, or as to the assignment or transfer to said libellant of said bill of lading; and they deny, on their information and belief, that the said libellant ever became or was the owner of said bill of lading, or of the cotton therein mentioned.

Second. The said claimants, further answering, deny that the master, purser, or agent of said steamship "Thames" did not regard his duty, promise, or undertaking to convey said cotton, or to deliver the same, as in said libel alleged, or that he wilfully or otherwise ever refused to deliver up the said cotton to the libellant; and they deny that the said libellant ever sustained damage to any amount by reason of any act or commission of the master, purser, or agent of said steamship touching said cotton.

Third. The said claimants, further answering, deny that any contract relating to said cotton was ever made by or on behalf of the master, purser, or agent of said steamship to convey the said cotton from the port of Savannah to the port of New York, except as hereinafter
25 stated, and deny that any contract was ever made relating to said cotton, under which or whereby the said libellant acquired any ownership in said cotton, or any right to the same, or the delivery thereof.

Fourth. The said claimants, further answering, say that the said steamship "Thames" was, at the times mentioned in the said libel, and theretofore, a vessel sailing between the ports of Savannah and New York, and forming one of a line of vessels plying between said ports under the name of the The Black Star Line, making regular trips between said ports, and carrying freight and passengers; that one G. S. Van Pelt, a principal partner in the firm of Bennett, Van Pelt & Co., made frequent shipments at Savannah of cotton by the steamships of said line, consigned to the firm of Bennett, Van Pelt & Co., doing business at No. 109 Water st., and intended for delivery to them, and which were so delivered; that, on or about the 28th day of January, 1868, the one hundred and eleven bales of cotton mentioned in the said libel were shipped by said G. S. Van Pelt on board of said steamship "Thames"
for said Bennett, Van Pelt & Co., and to be delivered to them,
26 and, at the request of said shipper, bills of lading therefor were signed therefor by the agents of said steamship, and that the contract and agreement made by and between said agent and said shipper was, that said 111 bales of cotton were for, and to be delivered to, said Bennett, Van Pelt & Co.; that said steamship afterwards sailed from Savannah, and arrived at the port of New York on the 2d day of February, 1868, and afterwards, according to the due and regular course of dealing in reference to the shipments of cotton so made by said G. S. Van Pelt, the said 111 bales of cotton were, upon demand, delivered to said Bennett, Van Pelt & Co., the consignees named in said bills of

lading, who received the same as such consignees; that no claim or demand was made or notice given by or on behalf of the libellant herein of any interest in or right to said cotton, or to the delivery thereof to him, nor had the master, purser, or agent of said steamship, or any person connected therewith, any knowledge, belief, or suspicion, or reason to believe or suspect, that any such interest existed, or would be
27 claimed to exist, until long after such delivery had been made, and that it was not until the 16th day of March, 1868, that any claim or demand was made or notice given by said libellant of any interest claimed by him therein; and said claimants, on their information and belief, aver that said libellant did not and does not hold said alleged bill of lading for value, and that if he has or holds the same, he has taken the same with full knowledge and notice of the delivery of said cotton to said Bennett, Van Pelt & Co., as hereinbefore alleged, and that the said bill of lading does not constitute a valid or outstanding obligation or liability on the part of said vessel, her master, purser, agent, or owners, or either of them; but that all the obligation and liabilities of said vessel, her master, purser, agent, and owners, were fully performed and discharged by the delivery of said cotton to said Bennett, Van Pelt & Co., as aforesaid.

Fifth. And said defendants, further answering, aver, on their information and belief, that, at and after the time of arrival of said steamship in the port of New York, and of the delivery of said cotton, the said Bennett, Van Pelt & Co., were in good credit, and were carrying
28 on business as merchants in the city of New York, meeting their obligations as matured; that the said bill of lading, which said libellant claims to hold was not presented at said vessel, or to any one acting on behalf of said vessel or in connection with the business of said vessel, nor any demand made thereon, until long after her arrival and the delivery of said cotton, and that in the mean time, after the delivery of said cotton, and before any demand on the part of said libellant, the said Bennett, Van Pelt & Co., became insolvent; that the said libellant held said bill of lading by or under some arrangement in connexion with advances made upon the certain obligation or obligations of said Bennett, Van Pelt & Co., and looked to them and to their personal credit for the repayment thereof, and not to said bill of lading or said cotton, and that it was not until after the delivery of said cotton that said claim of libellant for said cotton, and under said bill of lading, was made; and that said libellant, by his delay, negligence, and in presenting said bill of lading, and by the arrangements and dealings
29 made and had between said libellant and said Bennett, Van Pelt & Co., the said libellant waived and lost any and all claim under said bill of lading against said steamship, her master, purser, and owners.

Sixth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

RUSSELL STURGIS.

BARNEY, BUTLER & PARSONS,
Proctors for Respondent.

Sworn to before me this 28th day of April, A. D. 1868.
[SEAL NOTARIAL.] BENJ. L. JOHNSON,
Notary Public in N. Y. Co.

30 (Endorsed :) U. S. district court. Billopp Seaman vs. The "Thames," &c. Answer. Barney, Butler & Parsons, proc's for cl'ts.

Due service admitted April 28, 1868, and filing of original waived.
B. F. LEE, JR.,
Proctor for Libellant.

186 on cal. M'ch 3, 123 reached.

31 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 30th day of March, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Samuel Blatchford, district judge.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," HER TACKLE, &C. } 22—101.

This cause being called in its order on the day calendar, ordered hearing.

Pleadings read.

Evidence for libellant:

David J. Fanning ..... Sworn.
Deposition of Ezra J. Moses ..... Read.
" " Adolphus J. Brady ..... "

Cause adj'd to 11 a. m. to-morrow.

MARCH 31ST.—Cause continued.

Evidence for libellant:

Deposition of Cha's W. W. Broome ..... Read.
William H. Inman ..... Sworn.

Evidence for claimants:

Gilbert S. Van Pelt ..... Sworn
James C. Van Pelt ..... "
Robert Loudon ..... "
William Pitts ..... "
George S. Thomas ..... "
Bill of lading offered; obj'd to & excluded so far as it differs from libel.
Edward F. Richards ..... "
Invoice ..... Read.

Evidence for libellant:

Billopp Seaman ..... Sworn.

Cause adj'd to April 6th for argument.

32 APRIL 6TH.—Cause continued.

Mr. John E. Parsons argues for libellant.
Mr. W. A. Butler " " claimants.
Mr. John E. Parsons " in reply.—C. A. V.

(Indorsed:) Vol. , No. . United States district court for the southern district of New York. Order. , proctor for . Filed the day of , 18 . .

33 *Judge Blatchford's minutes of testimony.*

U. S. district court, March 30, 1869.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES."

DAVID G. FANNING, sworn.

Discount clerk in 4th National Bank. I know of the 111 bales of cotton named in libel. I went to office of Black Star line, with B. L. I suppose I saw ag't of line, Mr. Lowden. I asked him where the cotton was, specified in that B. L.; he s'd it had been given up to Bennett, Van Pelt & Co. I asked him by what authority, & he produced a B. L. from his papers, & stated that it was given up on that authority. No further material conversation. This was 19th Feb., 1868, date of maturity of draft.

X'd:

Draft shown. (Annexed to deposition of Ezra J. Moses.) Drawn by G. S. Van Pelt on Bennett, Van Pelt & Co., payable 15 days after sight, to order of B. Seaman, cash'r. Accepted Feb. 1, 1868. I made demand at request of pres't of bank, of P. C. Calhoun, pres't of b'k. No demand for cotton before that, so far as I know. The draft came to me Feb. 1, from cl'k in 4th Nat'l Bank. The B. L. was then attached to it. I sent the draft to B., V. P. & Co., for acceptance, by runner. We
34 sent B. L. with it; pinned to it. That was all we sent. I did not see the letter that accompanied draft. The draft came back 2d; it remained over night with parties on whom drawn. It was accepted by them when bro't back. I made proper entries then in books of b'k. The draft was in our hands for collection. When draft matured, it went to St. Nicholas B'k, where made payable, for payment; was passed to note-teller; not p'd at maturity; it came back to note-teller. After that I acted under directions of pres't, & went & demanded goods mentioned in B. L. I don't know who owned draft at that time.

The B. L. is not endorsed by libellant. I stated to Lowden I came on behalf of 4th National Bank.

Re-direct:

These 2 B. L. are duplicates of same set; we had but 1.

Q. What instructions were given to bank messenger in sending him with the draft to B., V. P. & Co?

(Obj. to; excluded; exception.)

Deposition of Ezra I. Moses.
" " Adolphus J. Brady.

MARCH 31, 1869.

Deposition of Charles W. W. Buren.

35 WILLIAM H. INMAN, sworn.

Comm. merchant; dealt in cotton in Feb., 1868; was familiar with value of cotton at that time.

(Admitted cotton worth am't of draft at its maturity. Libellant says he claims only to recover draft.)

X'd:

I know Atlanta Bank of Georgia; I not interested. My senior partner, Alfred Ostell, is; he resides in Atlanta; owns stock in it. I called on Lowden with the draft once, on behalf of Atlanta Nat'l B'k, & of 4th Nat'l B'k. Ostell is pres't of b'k. After maturity of draft, Ostell wrote to me to call on ag't of ship, & see what had become of cotton. I did so. I rec'd letter from Atlanta Nat'l Bank, to confer with pres't & cash'r of 4th Nat'l B'k as to this draft. They told me I had better go & see ag't of ship myself. In consequence of that I went.

Re-direct:

I then returned draft to 4th Nat'l B'k, or to Lee & Alvord, att'ys in this case. Atlanta Nat'l B'k has been kept informed of this suit. I probably have at my office the letter of Mr. Ostell.

X'd:

I have occasonally written to Ostell ab't the suit, and rec'd letters from him ab't it.

36 Defence.

GILBERT S. VAN PELT, sworn.

Am broker now. At these transactions, was cotton comm. merchant, 1 of Bennett, Van Pelt & Co.—Alfred R. Bennett, James C. Van Pelt, & myself. They did business here. I was in Savannah, to seek consignments of cotton, & make advances on cotton, & buy cotton; was at Savannah in winters of 1867 & 1868. Had regular branch at Savannah. Carried on business largely; drew nearly $100,000 a month on my house here. In May, 1868, 1st became acquainted with Brady & Moses. They are cotton comm. merchants in Savannah. Began dealing with them in Jan'y, 1868, or Dec'r, 1867. I sold exchange to them, & bo't cotton of them. Prior to this transaction, I had bo't cotton of them. I bo't the 111 bales of B. & M. ab't 3 or 4 days before date of draft, & of B. L.; agreed to buy it. They began to deliver it 26th. It was in their storehouse. They delivered it to me at their door. I bo't it of Moses. I was to give them a draft on my house for it, at 15 days' sight. Made terms with Brady; Moses ratified it. I made those terms before they began to deliver. They sent me an invoice of that cotton. This is the
37 original invoice made out by them and sent to me. The invoice was made out & sent to me Jan. 28th. (Invoice foots 8,851 59.) That was agreed purchase price of the 111 bales. I rec'd invoice at their office. The cotton then was on the ship. I p'd that invoice. I gave them draft for $8,300, cheque for difference, $551 59, & exchange added. I drew cheque at my office; made draft in my office. (Draft shown annexed to Moses' deposition.) This is the original draft. I took it myself on the day it bears date, to B. & M.'s office. They sent down for the cheque. I drew draft for $8,300 & gave it to him, thinking that w'd cover the invoice. Did not have the invoice then; gave him draft; got invoice. Then they sent for cheque for difference. No

change was made in draft after I drew it. I made draft payable to order of B. Seaman, cash'r, at request of B. & M. This cotton was sent to ship on my carts. Ship's rec'ts came to me, & from them I made out B. L. I sent the B. L. to ship's office—3, signed by O. Cohen & Co. They gave me 2, & I took them up to B. & M. I told Brady when I took them up, that he must give up the B. L. on acceptance of draft. I s'd to B., Of course, on acceptance of this draft, these B. L. will be given up; & he s'd, Certainly. I advised my house of draft. Had had
38 previous transactions with B. & M. of this kind, 2 or 3 weeks before; had also sold drafts to them on my house without buying cotton.

(Offer to contradict Brueu's statement as to transactions before to secure payment of draft; obj. to; admitted.)

In every transaction we had with B. & M. the B. L. was to be given up on acceptance of draft, & not held for payment. Never had transaction where B. L. was given to secure payment of draft. I rec'd no money from B. & M. in connection with this transaction. I believe I have stated the whole transaction.

X'd:

Broker in stocks now; been so ab't 8 months; am broker's clerk. Was engaged in cotton business 3 or 4 years. Before that was making grain bags. Ab't 2 or 3 years before that was a lawyer, practising here in N. Y. We failed Feb. 19, 1868, on protest of that draft. Don't remember who made figuring when I gave draft. I don't remember am't of cheque. Don't remember rate of exchange. Delivered draft to B. & M. the day of the date, 28 Jan'y.

(Invoice was put in evidence.)

This is the only invoice I had of the cotton from B. & M. I
39 wrote to my firm ab't time of this transaction. I wrote to my firm ab't that time every day or two; perhaps every day. I bo't the cotton of Moses; he showed me the samples. I arranged the prices with him. I believe that is all I did with him, in B. & M.'s store. Moses asked me to buy some cotton; showed me samples; stipulated for price, & I told him I w'd buy it as heretotore, by paying him with a draft at 15 days. I think this is all that was said at time. I had but 1 previous transaction of buying cotton. On that previous transaction B. L. had been attached to draft. I had no transaction with B. & M. after this 1 in suit. Next talk was when I went up with draft & B. L. Meantime I had rec'd the cotton. Don't remember having more than these 2 conv'r's with them ab't this matter. The 2d conv. was with Mr. Brady, I think; I am not positive. I can't recollect what was said at that time. I told Brady, Of course, these B. L. will be given up on the acceptance of the draft, as heretofore; & they s'd, Certainly they would. That is all I recollect of the conversation. I don't remember date of previous transaction; it was ab't 3 weeks before, I believe. I had not been in N. Y. between the 2 transactions. I returned to N. Y.
40 Feb. 22. I made no purchases of cotton at Savannah after this transaction. I meant I was at S. in winter of 1866-'7.

JAMES C. VAN PELT sworn.

Was 1 of firm of B., V. P. & Co. At these transactions I was in N. Y. I had charge of business of house here. I saw this draft 1st in 4th Nat'l B'k the day or day after it was presented at our office for acceptance. I wrote acceptance the day it is dated, Feb. 1. I wrote it in Seaman's B'k. I was not in my office when it was left. I went to bank;

saw Seaman. There were 2 drafts; they were bro't for acceptance; taken back. I asked S. for drafts, so I might accept them. The drafts were at note-teller's desk; there I found the drafts; this was 1 of them. (Drafts produced.) I accepted them; then I demanded B. L. Seaman refused. I s'd it was uncommercial; that he had never refused same thing before, & I told him I had been notified I must take cotton; that it was on dock, & consigned to us, & that I was going to take cotton, if I c'd get it, & that if I was interfered with I sh'd hold him responsible for damages, or words to that effect. This was in p. m., during bank hours, before 3 p. m. This demand was after I had written ac-
41 ceptance. The B. L. were there. We had printed notice from ship to take cotton when vessel arrived. I don't recollect that Seaman made any remark at all. We got cotton next day, I think, after we accepted draft; the cotton lay on pier; I saw it there; I can't say I saw the 111 bales. We put our carts on right away; took it to where we stored cotton; it was stored at 37 & 39 Greenwich st. for our ac.; sold it Feb. 3. I believe I have stated all that took place between me & S. Don't think I saw or heard from him again. Don't remember that S. told me for whose ac. he held draft.

X'd:

This is entry in reference to cotton from I have testified. Entry is: Sold, cash, C. B. Camp & Co., 111 bales of cotton; weights, 53,404 pounds, at 18 cents, $9,612 72. Cash means payable on delivery, deliverable at once, & payable at once. I don't know when delivery from ship commenced, or how many days it took to deliver it. Don't remember being at pier but once. I believe I made the transaction with Camp. I made all the sales of cotton. I don't remember anything particular ab't this. I stated to S. I w'd get cotton, if I c'd. I think
42 I sent my drays after it. I went to Lowden's office with cheque; saw ship's B. L. when I was there, I think. I don't remember who asked for it.

ROBERT LOWDEN, sworn.

Ag't of ship "Thames," 1 of Black Star Line, N. Y. to Savannah; been ag't between 3 & 4 years; in shipping business here since 1823; merchant; in Jan'y & Feb'y, 1868, vessels of this line largely engaged in bringing cotton; had bro't cotton for V. P. & Co. before. T—— arrived Sunday, Feb. 2, 1868. Monday, a. m., purser bro't papers, bills of freight, & freight list; notices made out by him; gave notice to B., V. P. & Co., as to those 111 bales; cotton delivered on pier 13, N. R., in usual way; cargo is all landed. I was there attending to it daily. Cargo is usually discharged & delivered 1st working day. The 111 bales all del'd 3d Feb'y; began delivery 3d Feb. B., V. P. & Co. p'd freight with cheque. Feb. 19 Mr. Fanning came to my office from b'k. F. s'd he wanted to see ship's B. L. I passed it to F. I asked him who he was from, & why he enquired. F. had a B. L. & draft in his hand. I asked if draft not p'd. He said, No. He s'd nothing, except it ought to have been attended to sooner. He made no demand. He s'd he enquired
43 for 4th Nat'l B'k.

X'd:

I heard F. asking about B. L.; I came out & enquired what it was. I did not hear what passed between clerk & F. F. s'd he held a B. L.; that was after I enquired, he s'd he had a draft. I did not handle draft or B. L. This was in answer to my enquiry what was the matter. H-

change was made in draft after I drew it. I made draft payable to order of B. Seaman, cash'r, at request of B. & M. This cotton was sent to ship on my carts. Ship's rec'ts came to me, & from them I made out B. L. I sent the B. L. to ship's office—3, signed by O. Cohen & Co. They gave me 2, & I took them up to B. & M. I told Brady when I took them up, that he must give up the B. L. on acceptance of draft. I s'd to B., Of course, on acceptance of this draft, these B. L. will be given up; & he s'd, Certainly. I advised my house of draft. Had had
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JAMES C. VAN PELT sworn.

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s'd he had draft, & showed B. L. He s'd it ought to have been attended to sooner. That is all I recollect. He was told by 1 of us that the cotton had been del'd on ship's B. L. He was shown it & ex'd it. I gave it to our counsel in this case. Don't remember Seaman & Lee calling on me. I did not see James C. Van Pelt when he came there, Feb. 3. I was at my office attending to delivery of freight, Feb. 3.

WILLIAM PITTS sworn:

Employ of Lowden, clerk & cashier, office corner Cedar & West. I am clerk to whom somebody applied at office, 3 weeks ab't after delivery of cotton; he asked if there were 111 bales of cotton del'd by us; he asked who to. I told him to Bennett, Van Pelt & Co. He wanted to know on what we del'd it. I showed him ship's B. L. He ex'd it.

44 He made a remark going out of office that it was strange it had not been attended to; he had no papers or documents with him that I saw; showed me no B. L. at that time. He spoke ab't 111 bales of cotton consigned to order, & asked who we del'd it to. I s'd B., V. P. & Co. He spoke ab't B., V. P. & Co., being consignee; ab't 111 bales. As people pay freight bills, I give orders for cotton. I think purser made out notice in this case. I rec'd freight for these 111 bales. Bennett and brother of G. S. Van Pelt came to office together & p'd freight. Till this man came, 3 weeks after, I had no notice as to this cotton belonging to any one but B., V. P. & Co. We had been bringing cotton for B., V. P. & Co.

X'd:

Gave order for delivery of this cotton in morning of Feb. 3d; gave it to Bennett or James Van Pelt. The ship had begun to discharge was discharging at time. I was not on dock; was in office. She began to discharge 7 a. m.; I am there at 8 a. m. Don't recollect hour of morning I gave order. Ab't 6 weeks afterwards, somebody on part of 4th Nat'l B'k made demand for cotton, brought B. L. at that time. (This is my handwriting; entry made by me the day the demand was made, M'ch 16.) The person s'd he was from 4th Nat'l Bank. Entry, "A formal demand was made this day by the representative of 4th

45 Nat'l B'k for 111 bales of cotton p'r steamer "T," Jan. 28, 1868, the same that we del'd to B., V. P. & Co., Feb. 3, 1868." That demand was made of me. Lowden present at time also. Entry was made M'ch 16. Notices for consignees were made by purser. I generally send them out; had clerk who attended to that branch of our business.

GEORGE S. THOMAS sworn.

Purser of "Thames," Jan'y, 1868; remember the 111 bales of cotton; vessel arrived Sunday p. m., 4 or 5 o'c.; began delivery 7 a. m., Monday. The 111 bales were del'd Monday & Tuesday on to pier in usual manner. I had ship's B. L. on voyage. I made up ship's papers. I made out bills for freight; made out freight for this 111 bales to B., V. P. & Co. Made it out on ship, day before we got in, from B. L. (Ship's B. L. shown.) This is the B. L. I 1st saw it ab't 10 minutes after the departure of the ship from Savannah. It was sent to me from ag't of steamer with balance of ship's papers. I knew I had the 111 bales on the ship. I rec'd them. Drayman bro't them to ship. I signed rec'ts; 1 of firm of O. Cohen & Co., signed B. L.; when I rec'd the B. L. face of it was as it is now, except am't of freight, which I put there. I had previously

46 bro't cotton for B., V. P. & Co. The mem. at foot "For Bennett, Van Pelt & Co., &c.," I don't know in whose handwriting it is.

3 partners in firm of O. Cohen & Co. I rec'd this B. L. from Mr. Philips, 1 of the firm. I do not know who made the mem. at foot. It is not in handwriting of O. Cohen or Phillips. I had nothing else but B. L. to make freight bill from.

X'd:

The endorsement on back was not on B. L. when I rec d it.

ROBERT LOWDEN recalled.

Signature to B. L. is by Phillips; this mem. at foot is not in handwriting of any member of firm, or any body from that office.

(B. L. offered, with mem. at foot; face of B. L., with mem. at foot, excluded except so far as it agrees with the other 2 B. L. annexed to Moses' deposition.)

WILLIAM PITTS recalled.

The endorsement B., V. P. & Co. on B. L. was made by Bennett or James Van Pelt when they came to our office & p'd freight. I presented them the B. L. & they took & endorsed it.

X'd:

I presented it to them to have it endorsed by them.

EDWIN F. RICHARDS sworn.

47 Warehouse-keeper; rec'd cotton on storage for them in Feb., 1868; it came to our store Feb. 3; p't went out, 54 bales, 6th; 7th, 16; 41 on 12th; don't remember what time. Feb. 6, I commenced delivering. It was stored for a'c. B., V. P. & Co.

X'd:

This entry is in my handwriting. I don't remember that I saw the cotton when it was rec'd, or that I saw it at all; don't remember any arrangement for storage of that cotton made before it came. My office is not in same building where cotton is rec'd; my part of the business is done at the office; this entry was not made on my knowledge, but on information bro't to me; my whole statement as to rec't & delivery of cotton is made on information of somebody else.

Re-direct:

These entries were made next morning.

JAMES C. VAN PELT recalled.

I went to b'k next business day after draft presented at office, when I wrote acceptance vessel had arrived, & I had been notified to take property.

For libellant.

BILLOPP SEAMAN sworn.

Present during this trial; heard evidence of James C. Van Pelt
48 as to what transpired when he accepted draft. V. P. came to my office day after business—day after draft presented. He asked me for B. L., saying he c'd not get cotton without it. I declined to give it. No further demand made on me; he did not tell me it was uncommercial; he did not tell me I had never refused same thing before; he did not tell me he was notified to take the cotton, & that it was on the dock; he did not tell me he was going to take the cotton if he c'd

get it; did not tell me he sh'd hold me responsible in damages if interfered with; nothing to that effect s'd bet. him & me.

X'd:

1st saw this draft Feb. 1—on day of its rec't; it came by mail; rec'd it from Brady & Moses; letter from them accompanying it. (This is the letter.) I did not open it myself; B. L. was annexed to draft. I left it with a clerk of the b'k; it was Mr. Fanning's assistant. Mr. F. was person to whom paper for collection was usually given; runner was instructed through Fanning; I did not see draft afterwards till V. P. came up about it. I don't remember he s'd he had come to accept the draft. He s'd he had come for the B. L. He did not, that I remember, say anything ab't accepting draft. I think it was bro't to my
49 office; he did not accept it in my presence; don't know when he accepted it. I think draft was attached to B. L. I did not know where the cotton was named in B. L.; I read B. L. on day of its rec't, Feb. 1.; made myself acquainted with its contents on day V. P. came; I did not know whether it had arrived or not. After he went away I returned the B. L. to the discount clerk; he is the clerk who has paper running to maturity. Bet. date V. P. was there, & maturity of draft, I did nothing ab't it—made no enquiry during that time as to where cotton was, nor during that time did I send or go to agents of vessel ab't it; nothing done by anybody, so far as I know, belonging to b'k ab't that cotton; been cash'r 4½ years; connected with b'k 3 mo's before I became cash'r. In habit of rec'g B. L. in course of business; had had similar drafts on B., V. P. & Co., accompanied by B. L. before. I did not pay or offer to pay freight on cotton at any time before maturity of draft. After maturity of draft, & its non-pay't, I sent, or Calhoun did, Fanning down same p. m., draft was unpaid; note-teller reported draft not paid; this draft was held by us for ac. Atlanta Nat. B'k. I notified them draft not p'd. I instructed F. to go
50 down, by direction of Calhoun, pres't of b'k. I told F. to go & get cotton; did not give him money to pay freight; did not know how much it was; told him to store cotton, if got it; did not tell him to pay freight.

Re-direct:

Atlanta Nat. B'k have been kept informed of this suit.

APRIL 6, 1869.

Mr. J. E. Parsons for libellant.
1 B. L. held for payment of draft.

Mr. W. A. Butler for claimants:

1 mere endorsement of B. L. did not transfer to libellant title to cotton.—C. A. V.

51 *Messrs. Bennett, Van Pelt & Co., bo't of Brady & Moses.*

111 bales cotton.

◈	12	bales,	449, 429, 466, 431, 450, 466, 411, 447, 437, 445, 400, 427, = 5,258 lbs. @ 16 c.....	841	28
J. M. C.	2	"	484, 491, = 975 " 16½ c.....	160	88
J. P. W.	4	"	525, 514, 496, 518, = 2,053 lbs. @ 14½ c..	297	69
P. P.	20	"	406, 410, 561, 541, 545, 530, 460, 565, 462, 485, 508, 545, 570, 512, 573, 443, 304, 520,		

			534, 535, = 10,029 lbs. @ 16½.....	1,654	79
◇a	5	"	464, 465, 420, 531, 403, = 2,283 lbs. @ 16..	265	28
T. B. D.	6	"	476, 473, 531, 583, 620, 587, = 3,270 " " 14½.	474	15
N. A.	13	"	573, 526, 505, 525, 392, 550, 540, 568, 562, 494, 570, 572, 479, = 6,856 lbs. @ 15 c...	1,028	40
J. G. D.	4	"	504, 538, 534, 549, = 2,125 lbs. @ 16½...	350	63
R. W. R.	2	"	680, 560, = 1,240 " " 16½...	204	60
S. & H.	1	"	311 " " 16½...	51	32
J. H. S.	4	"	514, 510, 520, 523, = 2,067 " " 15¾...	325	56
S. & G.	7	"	517, 504, 509, 497, 472, 489, 502, 3,490 lbs. @ 16 c.....	558	40
S. & B.	25	"	545, 545, 477, 450, 503, 487, 549, 521, 546, 520, 518, 576, 460, 444, 470, 386, 476, 570, 486, 586, 515, 545, 485, 525, 520, 12,705 lbs. @ 16 c.....	2,096	33
S. & B.	4	"	525, 508, 540, 523, 2,096 lbs. @ 14½ c.....	303	92
S. & B.	1	"	427 " " 16.....	68	32
S. & B.	1	"	412 " " 17.....	70	04
	111 bales.			$8,851	59

Paid Jan. 29th, 1868.

SAVANNAH, *Jan'y 28th*, 1868.

52

53 SAVANNAH, GA., 28 *Jan'y*, 1868.

B. SEAMAN, Esq.,
Cash'r, New York.

DEAR SIR: We here inclose for ac. Atlanta Nat. B'k as follows, viz:

G. Van Pelt, 15 d|s't, on Bennett, Van Pelt & Co.....	N $1,500
Do do	" $8,300

B. L. attached to each.
Respectfully,

BRADY & MOSES.

A.—M'ch 31, 1869. S. B.

54

55 District court of the United States, for the southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," &C. } Notice.

Please to take notice, that Moses who resides out of this district, the place of trial of said cause, and more than 100 miles distant therefrom will be examined (de bene esse) on the part of the libellant in the above-entitled cause before me (a commissioner duly appointed by the circuit court of the United States for the southern district of

New-York, under and by virtue of the acts of Congress in such case made and provided,) at my office at the United States courts, 41 Chambers street, in the city of New York, on the 1st day of July, 1868, at one o'clock in the afternoon of that day, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated, New York, the 30th day of June, A. D. 1868.

Yours, &c.

JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Messrs. BARNEY, BUTLER & PARSONS,
Proctors for Respondents.

56 STATE OF NEW YORK,
City & County of New York, ss:

Robert A. Piper, of said city, being duly sworn, deposes and says that, on the thirtieth day of June, 1861, at No. 111 Broadway, in the city of New York, he served the within notice on Messrs. Barney, Butler & Parsons, proctors for respondents, by delivering to and leaving with a clerk in charge of their office a duplicate copy of said notice.

R. A. PIPER.

Sworn to before me this 1st day of July, 1868.

DUNCAN McGREGOR,
Notary Public, New York City and County.

57 District court of the United States for the southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP THAMES.

SOUTHERN DISTRICT OF NEW-YORK, *ss:*

Billopp Seaman, of the city of New York, being sworn, says that he is the libellant in the above-entitled cause; that he is advised by his counsel and verily believes that the testimony of Moses, at present in the city of New York, is material and necessary for this deponent in the prosecution of this cause; that the said Moses lives at Savannah, Georgia, more than one hundred miles from the city of New York, where the court at which deponent expects the said cause will be tried is appointed by law to be held.

And this deponent further says that, as he is informed and believes, the respondents in the above-entitled cause all reside in the city and State of New York, the place where the examination of said witness is expected to be taken, and that, as he is also informed and believes, Barney, Butler & Parsons, the proctors for said respondents, reside in said city of New York.

58 BILLOPP SEAMAN.

Sworn before me this 30th day of June, 1868.

GEO. F. BETTS,
U. S. Comm'r.

District court of the United States in and for the southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES."

Let Ezra J. Moses, the witness named in the annexed affidavit, be examined (de bene esse) before me accordingly at the clerk's office of the district court in the city of New York, on the first day of July, 1868, at one o'clock in the afternoon, and let one day's notice be given to Messrs. Barney, Butler & Parsons, proctors for the respondents, of such examination.

JOHN A. OSBORN,
U. S. Comm'r.

(Endorsed:) Billopp Seaman vs. The Steamship "Thames." Notice for de bene esse.

59 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this first day of July, in the year of our Lord one thousand eight hundred and sixty-eight, I, John A. Osborn, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers st., in the city of New York, in the said southern district of New York, in the State aforesaid, Ezra J. Moses to testify and the truth to say, on the part and behalf of the libellant in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States for the southern district of New York, at New York, wherein Billopp Seaman is libellant vs. The Steamship "Thames," her tackle, &c., respondents.

And the said Ezra J. Moses, being about the age of thirty-five years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Ezra J. Moses, and he did thereupon depose, testify, and say as follows, viz:

I reside at Savannah, Georgia; my business is commission merchant.

Q. Who were the agents of the steamship "Thames," the vessel against which the libel in this cause is filed, and of the "Black Star Line" of steamers at Savannah, Georgia, on Jan'y 28th, 1868?

A. Octavius Cohen & Co., of Savannah.

Q. Are they accustomed to sign bills of lading for goods shipped on

board the Black Star Line of steamships, and have you had dealings with them as such agents to enable you to testify on that subject?

(Obj. to)

A. I have had sufficient dealings with them to enable me to know that they do sign bills of lading for goods shipped on said line of steamers.

60 Q. Do you know the signatures to the bills of lading now shown you?

A. I do; they are the signatures of Octavius Cohen & Co., the agents of the "Black Star Line."

Q. Who conducted for B. Seaman, the libellant, the transactions in Savannah which are the subjects of this cause?

A. Myself and partner.

Q. What is the name of your firm & who composed it at the time of the transactions?

A. Brady & Moses—composed of Adolphus J. Brady & Ezra J. Moses. I know G. S. Van Pelt, the person named in the bills of lading now before me, and his handwriting; the endorsement on the two bills of lading is G. S. Van Pelt's signature—the two bills of lading offered in evidence, marked Exhibits "A & B," J. A. O.—the same bills of lading to which Octavius Cohen & Co.'s signatures are affixed and alluded to above.

Q. What was the consideration for which G. S. Van Pelt endorsed the bills of lading to the libellant?

(Obj. to.)

A. For full value which he received from Brady & Moses, our firm, on a draft on his house amounting to $8,300; or, in other words, we took the bills of lading to secure payment for the said draft which we had cashed for him. The draft and the bills of lading were delivered to us on the same day, and in all probability at the same time.

X'd by Mr. Hubbard:

Q. Who signed those bills of lading?

A. What individual do you mean?

Q. Yes.

61 A. I don't know what individual member of the firm; they were not signed in my presence.

Q. Were they endorsed in your presence?

A. That I don't remember. I rather think they were. I would not be sure that I saw Mr. Van Pelt endorse them.

Q. When were they endorsed?

A. The same day the bill of lading was signed.

Q. How do you know that?

A. I know it—the cotton was shipped that day; & I know that the cotton was put on drays & left the warehouse before I saw the bills of lading. I saw but two bills of lading at that time. I saw the other which was claimed to be the third of these in the hands of the agent of the "Black Star Line," in Savannah. This was after the dispute had arisen in regard to this cotton, & the third bill of lading had been sent back to Savannah for investigation. Cotton goes from our warehouse. This cotton in question was cotton we had sold Van Pelt a few days before. Van Pelt paid us for this cotton in settlement.

Q. Had you received any instructions from Mr. Seaman, the libellant, in reference to this transaction before you advanced money on the draft?

(Obj'd to.)
A. No.
Q. Whose money did you advance?
(Obj. to.)
A. Advanced money which had been placed in our hands for
62 investment. It came from the Atlanta National Bank.
Q. How came you to have these bills of lading endorsed to Mr. Seaman?
(Obj. to.)
A. Because we were instructed to send the draft to him, as we had been doing previously in all transactions of a similar character. The Atlanta National Bank instructed us.
Q. The draft was sent to Seaman for collection, was it not?
(Obj. to.)
A. I know nothing of their transactions. I mean by "their," the Atlanta National Bank & the 4th National Bank of New York.
Q. State what the transaction was so far as you know?
(Obj. to.)
A. Our firm rec'd money from the Atlanta National Bank, Atlanta, Georgia, to be invested on proper securities; we were to pay it out by buying drafts in New York, & on proper security; we were not restricted to New York, & we were to see that the securities were ample; we were instructed to send the securities with the drafts on New York to B. Seaman, who was cashier of the Fourth National Bank. It was in pursuance of these general instructions that we took the draft and bills of lading before mentioned.
Q. Has this draft ever been paid?
(Obj. to.)
A. Not to my knowledge.
Q. Has your firm ever been called on to repay the money with which the draft was bought?
(Obj. to.)
63 A. It has not.
Q. What did you advance on this draft?
(Obj. to.)
A. We advanced the face of the draft, less the current rates of exchange and discount at that time.
(Proctor for respondents here gave notice to produce the draft, which was accordingly produced by the proctor for libellant, and offered in evidence by the respondents.)
(Obj. to. Marked Exhibit "C," J. A. O.)
Q. That draft is payable at fifteen days' sight?
(Obj. to.)
A. Yes.
Q. Did you have any other securities of Van Pelt in your possession besides the bills of lading?
(Obj. to.)
A. None.
Q. Have you had since?
(Obj. to.)
A. No.
Q. Have you ever purchased any other drafts made by Van Pelt, payable to the order of the Fourth National Bank, or its cashier?
(Obj. to.)
A. Yes.

Q. Please state when and what they were?
(Obj. to.)
A. There were some before—none since; and one at the same time, I think.
Q. Did you take collaterals for them?
(Obj. to.)
A. Always—bills of lading of cotton.
Q. Were these bills of lading, Ex. "A & B," taken for that draft, i. e. the one in evidence, or to secure general indebtedness or other drafts?
64 (Obj. to.)
A. To secure that draft ($8,300) alone.
Q. How did you come to take the draft and bills of lading in evidence?
A. Van Pelt applied to us to discount a draft on his house against shipments of cotton, and we required the bill of lading to be attached.
Q. What did you do with the draft and bills of lading after you received them from Van Pelt?
A. I enclosed the draft, with one bill of lading attached, to B. Seaman, cashier, on the same day, and I retained the other bill of lading in case of miscarriage of the one first sent.
Q. When did you send the second?
A. On the eleventh of March, 1868, to Lee & Alvord, attorneys for Mr. Seaman.

Re-examined by Mr. Lee:

Q. Did Octavius Cohen & Co., or any member of that firm, acknowledge that the signatures to the bills of lading, marked "Exhibits A & B., J. A. O.," were the signatures of their firm?
A. Yes; they acknowledged the one marked "A" to me, at their office in Savannah, a few days after the draft was protested; and I am almost positive that they did the other, ("Ex. B,") also.
Q. Can you tell positively when the drafts & bills of lading were purchased?
65 A. On the same day as the draft bears date—Jan. 28, 1868.
Q. Would you have taken the draft in evidence without the bills of lading?
A. We would not.
Q. What *was* the one hundred and eleven bales of cotton worth that are spoken of in these bills of lading?
A. They were worth over eighty-five hundred dollars, and I think much more.

Recross-exam'd by Mr. Hubbard:

Q. In whose handwriting *is* the blanks in the bill of lading filled in?
A. I don't know.
Q. Did you or your firm take any other security for the draft in evidence?
A. No.

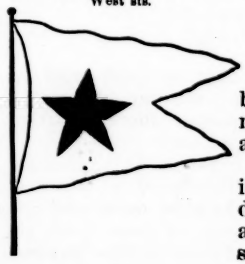
E. J. MOSES.

Subscribed & sworn to before me this 1st day of July, 1868.
JOHN A. OSBORN,
U. S. Comm'r.

66

67 EXHIBIT "A."—J. A. O. [B. L. No.

New York office, cor. of Cedar and West sts.



Black Star Line, Savannah and New York. Octavus Cohen & Co., agents, Savannah; R. Lowden, agent, New York.

Shipped by G. S. Van Pelt, in good order, on board steamship "Thames," whereof is master, now lying in the port of Savannah, Ga., and bound for New York, to say:

One hundred and eleven (111) bales cotton, being marked and numbered as per margin; to be delivered in like good order and condition, at the aforesaid port of New York, the dangers of the seas, restraints of Government, collisions, fire at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatsoever nature or kind excepted, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations unto order or to his or their assigns he or they paying freight one cent , (with average accustomed,) as per margin.

Marks and numbers.
G 41 B. C. 19,844
V. 58 " 29,382
P. 12 " 6,391
111 B. C. 55,617 lbs.

Freight.
Advance charges.
Total $——

It is expressly understood that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer, at her port of destination, and they shall be received by the consignee thereof, package by package, as so delivered, and if not taken away the same day by him,
68 they may, (at the option of the steamer's agents,) be sent to store, or permitted to lay where landed, at the expense and risk of the aforesaid owner, shipper, or consignee, weight, contents, and value unknown, and not accountable for leakages, rust, or breakage, if properly stowed. Neither the ship or owners will be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, unless bills of lading are signed therefor, and the value therein expressed. No bill of lading signed for less than $1 00.

In witness whereof the master, purser, or agent of said vessel hath affirmed to three (3) bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Savannah, this 28th day of January, 1868.

O. COHEN & CO.,
For Octavus Cohen & Co., Agents.

(Endorsed:) Deliver B. Seaman, cash'r, or order. G. S. Van Pelt. Ex. "A," J. A. O.

69 EXHIBIT "B."—J. A. O.

New York office, cor. Cedar & West sts.

Black Star Line, Savannah and New York. Octavus Cohen & Co., agents, Savannah; R. Lowden, agent, New York.

Marks and numbers.
G. 41 B. C. 19,844
V. 58 " 29,382
P. 12 " 6,391
111 B. C. 55,617 lbs.

Freight.
Advance charges.
Total, $——

Shipped by G. S. Van Pelt, in good order, on board steamship "Thames," whereof is master, now lying in the port of Savannah, Ga., and bound for New York, to say:

(111) one hundred and eleven (111) bales cotton, being marked and numbered as per margin; to be delivered in like good order and condition, at the aforesaid port of New York, the dangers of the seas, restraints of Government, collisions, fire at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation of whatsoever nature or kind excepted, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations, unto order , or to his or their assigns he or they paying freight one cent , (with average accustomed,) as per margin.

It is expressly understood that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer at her port of destination, and they shall be received by the consignee thereof, package by package, as so delivered, and if not taken away the same day by him, they may, (at the option of the steamer's agent,) be sent to store, or per-
70 mitted to lay where landed, at the expense and risk of the aforesaid owner, shipper, or consignee, weight, contents, and value unknown, and not accountable for leakages, rust, or breakage, if properly stowed. Neither the ship or owners will be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, unless bills of lading are signed therefor, and the value therein expressed. No bill of lading signed for less than $1 00.

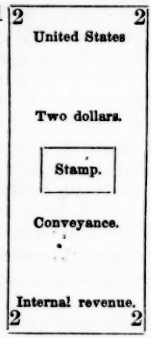
In witness whereof the master, purser, or agent of said vessel hath affirmed to three (3) bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Savannah, this 28th day of January, 1868.

O. COHEN & CO.,
For Octavus Cohen & Co., Agents.

(Endorsed:) Deliver B. Seaman, cash'r, or order. G. S. Van Pelt. Ex. "B," J. A. O. 1692.

71 G. S. VAN PELT.



$8,300.] SAVANNAH, GA., *Jan. 28th*, 1868.

Fifteen days after sight, pay to the order of B. Seaman, esq., cashier, eighty-three hundred ($) dollars.

G. S. VAN PELT.

To BENNETT, VAN PELT & CO.,
109 *Water st., New York.*

(Written across the face:) Accepted Feb. 1st, 1868, payable at St. Nicholas National Bank.

BENNETT, VAN PELT & CO.

(Endorsed:) 1692. 2, 2. United States. Two dollars. Stamp. Internal revenue. 2, 2. Internal revenue. 25. Stamp. 25. Internal revenue, 10, 10. Stamp. 10, 10.

72

73 UNITED STATES OF AMERICA,
State of New York, ss:

On the nineteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, at the request of the Fourth National Bank of the city of New York, I, Benjamin Franklin Lee, jr., a notary public, duly commissioned and sworn, dwelling in the city of New York, did present the original draft or bill of exchange, hereunto annexed, to a teller at the St. Nicholas National Bank, in the city of New York, (being the place where the said draft or bill of exchange is payable by acceptance,) and demanded payment thereof, which was refused: Not good.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawers and endorsers of said draft or bill of exchange, as against all others whom it doth or may concern, for exchange, reëxchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of said draft or bill of exchange.

In testimony whereof I have hereunto set my hand and affixed my seal at the city of New York aforesaid.

B. F. LEE, JR.,
Notary Public, Law Offices of Lee & Alvord,
74 *No. 4 Pine st., New York.*

Ex. "C," J. A. O.

[United States internal revenue. 25, stamp, 25.]

(Endorsed:) Bennett, Van Pelt & Co., for Atlanta. Protest. Feb. 19, 1868. $8,300. Fees & disbursements, 1 56. Notary public for the Fourth National Bank of the city of New York, at the law offices of Lee & Alvord, No. 4 Pine street, New York. Special attention given to the collection of notes and drafts.

75 H. Anstice & Co., stationers, 23 Nassau street, N. Y.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Osborn, a commissioner, duly appointed by the circuit

court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he lives in Savannah, Georgia, at a greater distance from the place of trial of the above cause than one hundred miles.

I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the adverse party, or his proctors, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit.

I further certify that, on the 1st day of July, in the year of our Lord one thousand eight hundred and sixty-eight, I was attended by the proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of filing the same with my own hand in the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this sixth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] JOHN A. OSBORN,
United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

76 (Indorsed:) 22—101. United States district court for the southern district of New York. Billopp Seaman vs. The Steamship "Thames," her tackle, &c., resp'd'ts. Deposition on the part of the libellant taken before John A. Osborn, United States commissioner, on the first day of July, 1868. Filed March 15th, 1869. Ent'd or.

77 District court of the United States for the southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES." } Notice.

Please to take notice that Adolphus J. Brady, who resides out of this district, the place of trial of said cause, and more than 100 miles distant

therefrom, will be examined (de bene esse) on the part of the libellant in the above-entitled cause before me, (a commissioner duly appointed by the circuit court of the United States for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided,) at my office, at the United States courts, 41 Chambers street, in the city of New York, on the ninth day of October inst., at 12½ o'clock, in the afternoon of that day, at which time and place you are hereby notified to be present, and put interrogatories if you shall think fit.

Dated New York, the 5th day of October, A. D. 1868.

Yours, &c.,

GEO. F. BETTS,

United States Commissioner, duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To BARNEY, BUTLER & PARSONS,
Proctors for Respondents.

78 (Indorsed:) U. S. district court, southern dist. of N. Y. Billopp Seaman vs. The Steamship "Thames," &c.

Due and timely service of the within notice is hereby admitted.
N. Y., Oct. 6, 1868.

BARNEY, BUTLER & PARSONS,
Resp. Att'ys.

79 UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss:

Be it remembered that, on this ninth day of October, in the year of our Lord one thousand eight hundred and sixty- , I, George F. Betts, a commissioner, duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at 41 Chambers street, in the city of New York, in the said southern district of New York, in the State aforesaid, Adolphus J. Brady, to testify and the truth to say, on the part and behalf of the libellant, in a certain suit or matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at New-York, wherein Billopp Seaman is libellant against The Steamship "Thames," her tackle, &c.

And the said Adolphus J. Brady being about the age of years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Adolphus J. Brady, and he did thereupon depose, testify, and say as follows, viz:

Examination by B. F. Lee, jr., proctor for libellant:

Q. What is your name, age, residence, and occupation?

A. Adolph J. Brady; aged 49 years; residence, Savannah, Georgia; I am a commission merchant.

Q. Who were the agents of the steamship "Thames," the vessel against whom the libel in this cause is filed, and of the Black Star Line of steamers at Savannah, Georgia, on January 28th, 1868?

A. Octavius Cohen & Co.

Q. Do you know whether or not Octavius Cohen & Co. sign the bills of lading for the vessels of the Black Star Line?

A. They do.

Q. Do you know the signatures to the bills of lading in this cause, marked Exhibits "A & B?"

80 A. I do; it is the signature of Octavus Cohen & Co. on both.

Q. Were the 111 bales of cotton mentioned in those bills of lading actually shipped on board the steamship "Thames?"

A. They were.

Q. Who conducted the transactions in Savannah out of which this suit arose?

A. We did—Brady & Moses—composed of myself and Ezra J. Moses.

Q. Do you know Gilbert S. Van Pelt, the person named as consignor in the bills of lading, marked Exhibits A & B, in this cause?

A. I know him personally.

Q. In whose handwriting is the endorsement on each of said bills of lading?

A. Said G. S. Van Pelt.

Q. What was the consideration of the endorsement and delivery of said bills of lading?

A. We gave him eighty-three hundred dollars, less exchange on New York and discount.

Q. Can you state on what day the said bills of lading were delivered to you?

A. On the 28th day of January, 1868.

Q. What did you then do with the bills of lading?

A. One of the bills of lading was sent by us to Billopp Seaman, cashier; the other we retained, as we always do, in case the first one is lost, and was afterwards sent to him.

81 Cross-examined by Mr. Butler:

Q. What were your relations to the Atlanta Nat'l Bank, of Atlanta, at the time of the transaction referred to in your direct?

A. We were their correspondents at Savannah; and had been so for at least two years.

Q. That bank had funds in your hands?

A. That bank sent us funds—whose funds they were, I do not know.

Q. To whose credit, in your books, were such funds placed?

(Obj'd to.)

A. To the credit of the bank.

Q. State whether you knew or kept any account in your books with any other party in reference to the funds so sent?

(Obj'd to.)

A. We did not.

Q. Was the money which you paid G. S. Van Pelt ($8,300) a special remittance from the bank, or was it part of their general funds in your hands?

(Obj. to.)

A. It was a part of their general funds.

Q. Were these funds employed by you in the purchase of exchange on New York, from time to time?

(Obj'd to.)

A. Yes, sir.

Q. Did you or not exercise your own discretion as to the exchange purchased?

A. No; we bought exchange only according to our instructions.

Q. Do you mean that each purchase of exchange was the sub-
82 ject of special instructions from the bank?

(Obj'd to.)

A. We had our general instructions; we took exchange at the market rates as it offered, when we had funds—always secured by bills of lading.

Q. To whom did you charge the $8,300 in your books?

(Obj'd to.)

A. To the Atlanta Nat'l Bank.

Q. It was so charged, was it not, at the time?

(Obj'd to.)

A. Yes, sir.

Q. Was there anything unusual or out of the ordinary course of your business in this transaction.

(Obj. to.)

A. No.

Q. Did not the transaction embrace the purchase of the bill of exchange, now shown you? (Exhibit C to deposition of Moses.)

(Obj'd to.)

A. Yes, sir.

Q. And was not such bill of exchange bought with & paid for out of the general funds of the Atlanta National Bank in your hands & charged to them in account?

(Obj'd to.)

A. It was.

Q. Had the bill of lading anything to do with the transaction except that it accompanied the bill of exchange as a security?

A. Yes.

Q. State what else.

A. We, Brady & Moses, took the bill of lading as security for the
83 payment of the draft. We refused at the time to take small drafts of the same party, G. S. Van Pelt, on his house, in New York, at sight, because the latter drafts were not secured. We held the bill of lading as security for the cotton specified therein, not merely for the acceptance, for such (I mean the acceptance of the draft) we could have got in Savannah; G. S. Van Pelt, who was at the time in Savannah, & in our office, being a member of the firm on which the draft was drawn.

Q. Then I understand you to testify that, although this was a time draft, payable fifteen days after sight, you did not take the bill of lading as security for acceptance by the drawers, but security for its payment at maturity?

A. I do so testify, from the fact that G. S. Van Pelt afterwards tried to change the transaction to that effect, wanting us to telegraph for the 4th National Bank to give up the bill of lading after acceptance, which we refused to do.

Q. What was the rate at which this bill of exchange was taken by you?

(Obj'd to.)

A. I can't say without referring to our books; but it was the regular current rate.

Q. What would have been the difference in rate between a time draft and a sight draft secured in the same way?

A. The difference would have been only the interest—the discount is the same, generally.

84 Q. Had you purchased the time drafts of G. S. Van Pelt on his New York house before.

(Obj'n.)

A. We had.

Q. How often.

A. I can't say; several times.

Q. Were those drafts secured in the same way as this?

A. Invariably.

Q. What was generally the length of time the drafts had to run?

A. Different lengths—generally about 15 days.

Q. Was it or not the course of dealing to send the drafts & bills of lading forward to the Fourth National Bank of N. Y., of which the libellant, Billopp Seaman is & was cashier, for presentation & collection?

(Obj'd to.)

A. We sent them according to our instructions from the Atlanta National Bank, to B. Seaman, cashier of the Fourth National Bank.

Q. Had you anything further to do with the transactions, after sending the drafts & bills of lading to the cashier of the 4th National Bank, New York.

A. We had nothing more to do with it.

Q. Would not the cashier acknowledge receipt of the documents?

A. He generally did.

Q. But he made no further report or communication to you on the subject in the ordinary course?

A. No.

85 Q. In this case, after B. Seaman, cashier, acknowledged the receipt of the documents, did he make any further communication to you or your firm on the subject?

(Obj'n.)

A. No.

Q. Did you not sometimes buy exchange on New York—time drafts—taking bills of lading as security, with the understanding & knowledge that on acceptance of the draft the bills of lading would be surrendered to the drawers?

(Obj. to.)

A. We might do so on our own account, but certainly would not have taken G. S. Van Pelt's without bill of lading, to be held as security for the payment.

Q. Do you know what was the actual custom of the 4th National Bank in reference to surrendering the bills of lading?

(Obj. to.)

A. I don't know anything about their transaction of the business.

Q. Did you write or give any special instructions to the 4th National Bank, or to B. Seaman, cashier, in this case.

(Obj'd to.)

A. We did not.

Q. Was this transaction, so far as you remember, and have testified, in all respects similar to previous transactions with the same parties.

(Obj'd to.)

A. Yes.

Q. Did you ever get G. S. Van Pelt to accept in the name of his house in New York any draft drawn by him in Savannah.

(Obj'd to.)

A. No.

86 Q. Do you know that he could have bound his New York house by an acceptance.

(Obj'd to.)

A. I am not lawyer enough to say. I assume that he could from my experience as a merchant.

Redirect by Mr. Lee.

Q. Did you ever advance any money to G. S. Van Pelt, and drafts on time, secured by bills of lading, to be given upon the acceptance of the drafts?

A. We did not.

Recross by Mr. Butler.

Q. Then, if in fact they were given up on acceptance of the drafts it was the act of Seaman, cashier of the 4th Nat'l Bank, entirely irrespective of anything done by you?

A. I don't know that any were ever given up. If they were so given up, it was not on our responsibility.

A. J. BRADY.

Subscribed & sworn to this 9th day of October, 1868.

GEO. F. BETTS.
U. S. Comm'r.

87 H. Anstice & Co., stationers, 23, Nassua street, N. Y.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides out of this district—the place of trial of said cause—and more than 100 miles distant therefrom.

I further certify that due notification of the time and place of taking the said deposition signed by me, was made out and served on the proctors for the claimants to be present at the taking of the deposition, and to put interrogatories, if he or they might think fit.

I further certify that, on the ninth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, I was attended by proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth,

and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of filing the same with my own hand in the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

GEO. F. BETTS,
United States Commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

88 (Indorsed:) 22—101. United States district court for the southern district of New York. Billopp Seaman vs. The Steamship "Thames," &c. Deposition on the part of the libellant taken before Geo. F. Betts, United States commissioner, on the 9th day of October, 1868. Filed October 9th, 1868. Ent. order.

89 U. S. district court. southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES."

You will please to take notice that the testimony of Charles W. W. Bruen, will be taken, de bene esse, in the above-entitled cause, before a United States commissioner, at the office of the clerk of the United States district court in Savannah, Georgia, (being the city where said witness resides,) on the seventh day of January, 1869, said examination to commence at eleven o'clock, a. m. And you are hereby notified to be present at the taking of the same, and to put interrogatories, if you shall think fit.

New York, December 26, 1868.
Yours, &c.

B. F. LEE, JR.,
Proctor for Libellants.

To BARNEY, BUTLER & PARSONS, Esq'rs,
Proctors for Resp'dts.

90

91 In the district court of the United States for the southern district of New York.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES."

STATE, CITY, & COUNTY OF NEW YORK,
Southern District of New York, ss:

BILLOPP SEAMAN, of the city and State of New York, being duly sworn says:

That he is the libellant in the above-entitled cause; that he is advised by his proctor, and verily believes, that the testimony of Charles W. W. Bruen, of the city of Savannah, in the State of Georgia, is material and necessary for this deponent in the prosecution of this cause; that said Charles W. W. Bruen lives at said city of Savannah, more than one hundred miles distant from the city of New York, where the court at which this deponent expects the said cause will be tried is appointed by law to be held; and deponent further says that he is informed and believes that all of the respondents in the above-entitled cause, and also Barney, Butler & Parsons, esq'rs, the proctors for the respondents, reside in said city of New York.

BILLOPP SEAMAN.

Sworn to before me this 26th day of December, 1868.
[COMM'S SEAL.] JOSEPH GUTMAN, JR.,
U. S. Commissioner, S. D. N. Y.

92 (Endorsed:) U. S. district court, southern district of New York. Billopp Seaman vs. The Steamship "Thames." Affidavit & notice. B. F. Lee, jr., proctor for libellant, 4 Pine st., N. Y.

93 UNITED STATES OF AMERICA,
Southern District of Georgia:

In admiralty, in the U. S. dist. court, so. dist. of New York.

BILLOPP SEAMAN
vs.
THE "THAMES," &C.

On this seventh day of January, in the year of our Lord one thousand eight hundred and sixty-nine, before me, James McPherson, a commissioner duly appointed by the fifth circuit court of the United States for the southern district of Georgia, under and by virtue of the act of Congress, "for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, personally appeared at my office, in the city of Savannah, in said southern district of Georgia, Charles W. W. Bruen, a witness on the part of the libellant, in a certain civil cause of admiralty and maritime jurisdiction, now pending and undetermined in the district court of the United States for the southern district of New York, wherein Billopp Seaman is the libellant, against The Steamship "Thames," her tackle, apparel, furniture, and engines, and Russell Sturgis, Henry W. Hubbell, O. De Forest Grant, and Robert L. Taylor, are claimants.

94 And the said Charles W. W. Bruen, having been by me first cautioned and sworn to testify the whole truth, did thereupon depose and say:

That he is forty-six years old; occupation, clerk for Brady & Moses, of Savannah, Ga., and has been in their employment for three years and upwards, and was so during the month of January last. Deponent knows one G. S. Van Pelt, and knows of a certain transaction between G. S. Van Pelt, and Brady & Moses, in January, 1868, to wit, on the 28th day of January, A. D. 1868. Brady & Moses purchased a bill of exchange from the said G. S. Van Pelt, for eighty-three hundred dollars, drawn by the said G. S. Van Pelt on Bennett, Van Pelt & Co., of

New York, at fifteen days' sight, payable either to the order of B. Seaman, cashier, or to G. S. Van Pelt's own order, and endorsed by him to B. Seaman, cashier, (deponent does not remember which.) The draft was negotiated at the office of Brady & Moses, of Savannah, Ga. G. S. Van Pelt received the money for the draft from Brady & Moses. Brady & Moses purchased the draft for account of the Atlanta National Bank, of Atlanta, Ga., they being agents of said Atlanta National Bank, and were under instructions from the said bank to remit all exchange purchased for them to B. Seaman, cashier of the Fourth National Bank of New York. To secure the payment of the said draft of eighty-three hundred dollars, G. S. Van Pelt turned over to
95 Brady & Moses, two bills of lading, (original and duplicate,) for one hundred and eleven bales of cotton.

(NOTE.—Counsel for respondents objects to any testimony as to the contents of the bill of lading.

The deponent here presents a copy of the bill of lading which is hereto annexed, marked Exhibit "A."

Counsel for the respondent objects to the copy of bill of lading, unless affidavit be made of loss of the original and duplicates.)

Deponent says further of these bills of lading, one was attached to the draft, and the draft, & bill of lading attached, sent to B. Seaman, cashier, of New York, by mail. The said bill of lading was offered to secure the payment of the said draft, and not the acceptance. A. J. Brady, E. J. Moses, and deponent, with G. S. Van Pelt were present at the negotiation of said draft. Brady & Moses had other transactions of the same sort with the said G. S. Van Pelt, and one other on the same day. All these transactions were conducted in the same manner; the understanding being that the bill of lading was endorsed to secure the payment of the draft.

Deponent further states that, after the draft & bill of lading was sent on to New York, G. S. Van Pelt requested Brady & Moses to in-
96 struct the Fourth National Bank to deliver up the bill of lading to Bennett, Van Pelt & Co., which Brady & Moses declined to do.

Deponent says further that Octavus Cohen & Co., acted in Savannah as agents of the Black Star Line, of which the steamship "Thames" was one vessel, at that time, and were in the habit of signing bills of lading for goods shipped by said Black Star Line.

Deponent further states that Brady & Moses had no concern with Bennett, Van Pelt & Co., except as drawees of the draft, and the draft was cashed on the security of the cotton represented by the bill of lading, and not the personal credit of Bennett, Van Pelt & Co.

Cross-examination:

Deponent was present during the transaction of the draft all the time. No one within the knowledge of deponent gave notice to the agents or owners of the Black Star Line, or officers of the "Thames," of the transfer of the bills of lading.

Deponent says that Brady & Moses had been taking drafts on Bennett, Van Pelt & Co., for some time before this transaction, and, to the best of deponent's knowledge, they were paid at maturity, as nothing further was heard from them; the other draft drawn on Bennett, Van Pelt & Co., on same day as the one in question, was paid. De-
97 ponent had no information of the dishonor of the draft for nearly a month after its date, as it would take nearly that time in the usual course of business for the information to come to him as book-

keeper of Brady & Moses. Deponent cannot recollect when he first heard, or when Brady & Moses were first informed of the delivery of the cotton to Bennett, Van Pelt & Co.; thinks they did not hear of it until after the maturity of the draft.

Redirect examination:

All other drafts drawn on Bennett, Van Pelt & Co., which were purchased by Brady & Moses, were always accompanied by bills of lading.

Q. Whether or not shortly after the purchase of the eighty-three hundred dollars' draft mentioned, and before anything had been heard by Brady & Moses injurious to the credit of Bennett, Van Pelt & Co., another draft for a smaller amount, drawn by G. S. Van Pelt on Bennett, Van Pelt & Co., was offered to Brady & Moses, and declined by them because unaccompanied by security?

(Question objected to by counsel for respondents as being irrelevant to any matter in issue.)

A. Brady and Moses were asked if they would take a draft without security on Bennett, Van Pelt & Comp'y, and they declined. This was only a short time after the transaction in question, and before
98 hearing anything detrimental to the credit of Bennett, Van Pelt & Co.

CHARLES W. W. BRUEN.

Taken, subscribed, and sworn to this seventh day of January, A. D. 1869.

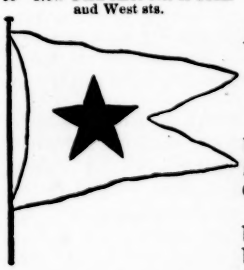
[SEAL.]

JA'S McPHERSON,
U. S. Comm'r, So. Dist. of Ga

Southern district of Georgia.

EXHIBIT "A."

99 New York office cor. of Cedar and West sts. [B. L. No.



Black Star Line, Savannah and New York. Octavus Cohen & Co., agents Savannah; R. Lowden, agent New York.

Shipped by G. S. Van Pelt, in good order, on board steamship "Thames," whereof is master, now lying in the port of Savannah, Ga., and bound for New York, to say:

One hundred and eleven (111) bales cotton, being marked and numbered as per margin, to be delivered in like good order and condition at the aforesaid port of New York, the dangers of the seas, restraints of Government, collisions, fire at sea, in port, or on shore, accidents from machinery, boilers, steam, or any other accidents of the seas, rivers, and steam navigation, of whatsoever nature or kind excepted, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations, unto order, or to his or their assigns, he or they paying freight one cent (with average accustomed,) as per margin.

Marks & numbers.

G. 41	B. C.	19,844
V. 58	"	29,382
P. 12	"	6,391
111	"	55,617 lbs.

Freight.
Advance charges.
Total $——

Southern district of Georgia. Exhibit "A."

Exhibit "A."

100 U. S. commissioner's seal.

It is expressly understood that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer, at her port of destination, and they shall be received by the consignee thereof, package by package, as so delivered; and if not taken away the same day by him, they may (at the option of the steamer's agents) be sent to store, or permitted to lay where landed, at the expense and risk of the aforesaid owner, shipper, or consignee; weight, contents, and value unknown, and not accountable for leakage, rust, or breakage if properly stowed. Neither the ship or owners will be responsible for gold, silver, precious stones or metals, jewelry, nor treasure of any kind, unless bills of lading are signed therefor, and the value therein expressed. No bill of lading signed for less than $1 00.

In witness whereof, the master, purser, or agent of said vessel hath affirmed to three (3) bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Savannah this 28th day of January, 1868.

For O. Cohen & Co.

OCTAVUS COHEN & CO., *Agents.*

(Endorsed:) Deliver B. Seaman, cash'r, or order.

(Signed) G. S. VAN PELT.

True copy of the original.

C. W. W. BRUEN.

101 UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, James McPherson, a commissioner duly appointed by the fifth circuit of the United States for the southern district of Georgia, under and by virtue of the "act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, do hereby certify that *that*, in pursuance of the notices hereunto attached, that, on the seventh day of January, in the year of our Lord one thousand eight hundred and sixty-nine, I was attended by W. S. Basinger, proctor on the part of the libellant, and S. Yates Levy, proctor on the part of the respondents, and by said witness, Charles W. W. Bruen, on part of the libellants, and said witness was by me carefully examined, and cautioned, and sworn to testify the truth, and the testimony by him given was by me reduced to writing, and thereafter subscribed by the said witness in my presence, and that I am not of counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in the said caption.

JA'S McPHERSON,
U. S. Comm'r So. Dist. of Ga.

102 (Endorsed:) U. S. dist. court, so. dist. of New York. In admiralty. 22—101. Billopp Seaman, libell'ts, &c., vs. The S. S. "Thames," &c. Deposition, de bene esse, of Charles W. W. Bruen, of Savannah, Ga., on the part of libellant. Filed Jan'y 11th, 1869. Ent'd order. Comm'r's fee $7 20.

103 At a stated term of the district court of the United States of America for the southern district of New York, held at the Uni-

ted States court-rooms, in the city of New York, on Monday, the seventh day of June, in the year of our Lord one thousand eight hundred and sixty-nine:

Present, the Honorable Samuel Blatchford, district judge.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," HER TACKLE, &C. } 22—101.

This case having been heard on the pleadings and proofs, and argued and submitted on briefs and points, by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellant recover in this action against The Steamship "Thames," her tackle, &c., the sum of eight thousand three hundred dollars being the amount of the draft made by Gilbert S. Van Pelt, drawn on Bennett, Van Pelt & Co., of New York, and payable to said libellant with interest thereon from February 19, 1868, to the date of the decree, at the rate of seven per cent. premium, & his costs taxed, said sum and interest and costs amounting in the whole to the sum of nine thousand two hundred & sixty-three $\frac{86}{100}$ dollars, and that said steamship, &c., be condemned therefor.

8,300 00
Int. 756 49
Cost 207 37
$9,263 86

And it is further ordered and decreed that, under the act of Congress, approved March 3d, 1847, a summary jud'ment be, & the same is hereby, entered against Russell Sturgis, for self & others, claimants, the principals and Russell Sturgis and George W. Blunt, the sureties,
104 on their bonds given on the discharge of the property arrested for the sum of seventeen thousand two hundred and fifty dollars, the amount of their said bonds executed on discharging the said steamship from custody.

And it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, the libellant have execution to enforce satisfaction of this decree.

SAM'L BLATCHFORD.

B. F. LEE, Jr.,
Proctor for Libellant.

(Endorsed:) 5—285. J. docket, vol. 22, No. 101. United States district court for the southern district of New York. Billopp Seaman vs. The Steamship "Thames," her tackle, &c. B. F. Lee, jr., p'r libell't. Barney, Butler & Parsons, proctors for cl'ts. Final decree & summary judg't ag't Ste'p'n. Filed the seventh day of June, 1869. Docketted judgment, June 8, 1869.

105 District court of the United States for the southern district of New York, in admiralty.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," HER TACKLE, APPAREL, AND FURNITURE. }

Please take notice that the respondents & claimants intend to appeal from the final decree of the court in the above-entitled cause to the next term of the U. S. circuit court.

Dated New York, June 14, 1869.

BARNEY, BUTLER & PARSONS,
Proctors for Respondents & Claimants.

To GEO. F. BETTS, Esq.,
Clerk of said Court.

(Endorsed:) 22—101. Billopp Seaman vs. The Steamship "Thames," her tackle, &c. Notice of appeal. Barney, Butler & Parsons, proctors for respondents. To Geo. F. Betts, esq. Filed June 16th, 1869.

106

107 U. S. district court.

BILLOPP SEAMAN
vs.
THE SHIP "THAMES," &C.

I hereby consent that the time to perfect the bond on appeal herein by the claimants be extended seven days from this date, & in the meanwhile execution under the final decree be stayed until the expiration of said seven days.

N. Y., June 30, 1869.

B. F. LEE, Jr.,
Proctor for Libellants.

(Endorsed:) 22—101. U. S. dist. court. B. Seaman vs. The St'ship Thames, &c. Consent extending time to perfect bond on appeal, & stay ex'n for 7 days. Filed June 30, 1869.

108

109 B. F. LEE, JR. A. A. ALVORD.

[Office of Lee & Alvord, attorneys and counsellors at law, No. 4 Pine street,]

NEW YORK, *July* 7, 1869.

U. S. D. court.

B. SEAMAN
vs.
THE ST'SHIP "THAMES," &C.

CLERK U. S. D. C'T:

I am satisfied with Russell Sturgis & Ferdinand Crocker, the sureties proposed by the appellant in this cause. They may execute the stipulation.

Yours, &c.,

B. F. LEE, JR.,
Proctor for Libellant.

Filed July 9th, 1869.

110

111 *Bonds for costs and damages on appeal.*

Circuit Court of the United States of America for the southern district of New York, in the second circuit.

BILLOPP SEAMAN, LIBELLANT AND APPELLEE,
vs.
THE STEAMSHIP "THAMES," HER TACKLE, &C.,
Russell Sturgis & als., cl'ts & appellants.

Known all men by these presents that we, Russell Sturgis and Fer-

dinand Crocker, are held and firmly bound unto the above-named libellant, appellee, in the sum of nineteen thousand dollars, to be paid to the said libellant, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the ninth day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-named claimants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit, by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain full force and virtue.

RUSSELL STURGIS. [L. S.]
FERDINAND CROCKER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 9th day of July, 1869, before me.

GEO. F. BETTS,
U. S. Comm'r.

112 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Ferdinand A. Crocker, being duly sworn, deposes and says that he resides in the eastern district of New York, & that he is worth the sum of thirty-eight thousand dollars, over and above all his just debts and liabilities.

FERDINAND A. CROCKER.

Sworn to this 9th day of July, A. D. 1869, before me.

GEO. F. BETTS,
U. S. Comm'r.

(Indorsed:) Vol. 22, page 101. U. S. circuit court. Billopp Seaman, lib't & appellee, *vs.* The Steamship "Thames," her tackle, &c., Russell Sturgis & o'rs claimants & appellants. Bonds for costs and damages and appeal. Barney, Butler & Parsons, appellant's proctors. Filed this ninth day of July, 1869.

113 U. S. circuit court, southern dist. of New York.

STEAMSHIP "THAMES," HER TACKLE, APPAREL, &c., Russell Sturgis & others, claimants & appellants,
against
BILLOPP SEAMAN.

CITY & COUNTY OF NEW YORK, *ss:*

Frank W. Angel, being duly sworn, says he is clerk in the office of Barney, Butler & Parsons, proctors for the claimants & appellants herein; that, on the 20th day of July, 1869, at No. 6 Pine street, in said city, he served the annexed appeal on B. F. Lee, jr., the proctor for the

libellant herein. Deponent made such service by delivering a copy of the same to, and leaving the same with, a person in, at, & having charge of the office of said proctor for libellant, during office hours and during the absence of said proctor therefrom.

FRANK W. ANGEL.

Sworn to before me this 20th day of July, 1869.
[NOTARIAL SEAL.] BENJ. L. JOHNSON.
Notary Public in N. Y.

114

115 Circuit court of the United States for the southern district of New York.

THE STEAMER "THAMES," HER TACKLE, APPAREL, &c., Russell Sturgis, Henry H. Hubbell, O. De Forest Grant, and Robert L. Taylor, claimants and appellants,
versus
BILLOPP SEAMAN, LIBELLANT AND APPELLEE.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully showeth: That, on or about the 19th day of March, in the year one thousand eight hundred and sixty-eight, the above-named libellant, Billopp Seaman, exhibited his libel in the district court of the United States, for the southern district of New York, against The Steamship "Thames," her tackle, apparel, and furniture, for the recovery of damages alleged to have been sustained by him by reason of the alleged refusal to deliver certain bales of cotton to libellant, according to the terms of a certain bill of lading therefor, issued by the master of said steamship, and claimed to be held by said libellant.

That the said steamship was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim &
116 entering into stipulations, and your petitioners thereupon, on the 28th day of April, 1868, filed their answer to said libel in said district court, praying that the said libel be dismissed with costs, as by reference to the said libel and the said answer will more fully appear.

That the said cause came on to be heard before the Honorable Samuel Blatchford, judge of the said district court, on or about the 30th or 31st days of March, 1869, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and that the said judge having advised thereon, on the 7th day of June, 1869, made a decree in said cause, whereby it was in substance adjudged that the said libellant recover against the said Steamship "Thames," her tackle, &c., the sum of eight thousand three hundred dollars and interest, together with costs, in all amounting to the sum of nine thousand two hundred and sixty-three $\frac{86}{100}$ dollars.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as said libellant was not entitled to any damages in the premises.

And these appellants, for these and other reasons, appeal from the whole of said decree in favor of the said libellant to the next circuit court to be held in the said district, and on said appeal they intend to

have said cause heard anew in the circuit court on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

117 And appellants pray that the record and proceedings may be returned to the said circuit court, and that the said decree may be reversed, or such other decree thereon be made as to said circuit court shall seem just, and that the appellee may be condemned to pay the appellants their costs and damages in the premises.

Dated New York, July 20, 1869.

BARNEY, BUTLER & PARSONS,
Proctors for Claimants and Appellants.

(Endorsed:) 22—101. U. S. circuit court, southern dist. N. Y. Steamship "Thames," her tackle, apparel, &c., Russell Sturgis & others, claimants & appellants, vs. Billopp Seaman. Appeal. Barney, Butler & Parsons, proctors for clam'ts and appell'ts, 111 Broadway, N. Y. Filed July 21, 1869.

118

119 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Tuesday, the eighth day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," &C.

The appeal from the district court coming on to be heard:

Mr. B. F. Lee, jr, reads from the apostles evidence on part of libellants.

Case adjourned to 11 a. m. to-morrow.

120

121 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the ninth day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

BILLOPP SEAMAN
vs.
THE STEAMSHIP "THAMES," &C.

This cause being still on hearing:

Mr. William Allen Butler argues on part of claimant and appellants.

Mr. B. F. Lee argues on part of libellant and appell*ant*. Cur. adv. vult.

122

123 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the fifth day of May, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

BILLOPP SEAMAN, LIBELLANT & APPELLEE,
vs.
THE STEAMSHIP "THAMES," HER ENGINES, tackle, &c.

This cause having been heard on the *the* pleadings and proofs on the appeal of Russell Sturgis and other claimants, appellants from the final decree of the district court of the United States for the southern district of New York, and having been argued by the advocates of the respective parties, and deliberation having been had in the premises: It is now ordered, adjudged and decreed by this court, that said decree of the district court for the southern district of New York be in all things affirmed.

And it is further ordered, adjudged, and decreed that the libellant, appellee, recover against the said steamship "Thames," her engines, tackle, &c., or her said claimants, appellants, the sum of

124 ($9,056 49) nine thousand and fifty-six dollars $\frac{49}{100}$ *dollars*, being the amount of damages to the said libellant by reason of the non-delivery to him of the bales of cotton in said pleadings mentioned; and the costs of the libellant in the said district court as taxed in said court, which it was adjudged by said final decree of said district court that the libellant recover against the said steamship "Thames," her engines, tackle, &c.

Decree 9,263 86.

And it is further ordered, adjudged, and decreed that said libellant, appellee, recover against said steamship "Thames," her engines, tackle, &c., or her said claimants, as damages sustained by them by reason of said appeal of said claimants, the interest on the amount of said damages and costs so adjudged by said decree of said district court from the date of said decree in said district court as aforesaid, (the seventh day of June, A. D. 1869,) besides their costs on said appeal to this court as taxed amounting together to the sum of ($675 80) six hundred and seventy-five $\frac{80}{100}$ dollars.

All of which said damages, costs, and interests, amounting in the aggregate to the sum of ($9,939 66) nine thousand nine hundred and thirty-nine dollars and sixty-six cents, which it is hereby ordered, adjudged, and decreed that the said libellant, appellee, recover against the said steamship "Thames," her engines, tackle, &c., or her said claimants.

125 And it is further ordered, adjudged, and decreed that unless an appeal be taken from this decree, within the term prescribed by law, a summary judgment therefor be entered in favor of the said libellant, appellee, against the said steamship "Thames," her engines, tackle, apparel, and furniture, her owners, claimants, and appellants, and against Russell Sturgis and Frederick Crocker, sureties on said appeal, in the sum of nineteen thousand dollars, the amount of their stipula-

tions by them given on said appeal, and that said appellee have execution therefor to satisfy this decree.

(Signed) L. B. WOODRUFF.

126 (Endorsed:) U. S. circuit court, southern dist. of N. Y. Billopp Seaman, lib'l't & appellee, vs. The Steamship "Thames," &c. Final decree. Filed May 5, 1870.

127 Supreme Court of the United States, on appeal from the circuit court of the United States, in the southern district of New York.

BILLOPP SEAMAN, LIBELLANT & APPELLEE,
vs.
THE STEAMSHIP "THAMES," HER ENGINES, BOATS, tackle, &c., Russell Sturgis, Henry W. Hubbell, O. De Forest Grant, and Robert L. Taylor, claimants and appellants. } In admiralty.

To the honorable the Supreme Court of the United States:

The appeal of Russell Sturgis, Henry W. Hubbell, O. De Forest Grant, and Robert L. Taylor, the above-named claimants and appellants, respectfully showeth: That, on the 19th day of March, 1868, the above-named Billopp Seaman filed his libel in the district court of the United States for the southern district of New York, against The Steamship "Thames," her engines, boats, tackle, &c., in a cause civil and maritime, for the recovery of damages alleged to have been
128 sustained by him by reason of the non-delivery to said libellant, of 111 bales of cotton shipped on said steamship "Thames," at Savannah, Georgia, to New York, and that the said steamship "Thames" was arrested upon process issued upon said libel, and was discharged on your petitioners filing their claim and entering into stipulations; and your petitioners thereupon filed their answer to said libel, and such proceedings were had in the said cause that, on the seventh day of June, 1869, a final decree was made and pronounced therein by the said district court, wherein it was adjudged that the said libellant recover against the said steamship "Thames," her tackle, &c., the sum of nine thousand two hundred and sixty-three $\frac{86}{100}$ dollars.

And that, after such final decree, your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court that, afterwards, on the 5th day of May, 1870,
129 said circuit court made a final decree in said cause, whereby it was decreed that the said decree of the district court be in all things affirmed, with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled; which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleading, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said

libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated New York, May 17th, 1870.

RUSSELL STURGIS.

BARNEY, BUTLER & PARSONS,
Proctors for Appellants.
W'M ALLEN BUTLER,
Advocate.

130

131 Circuit court of the United States of America for the southern district of New York, in the second circuit.

BILLOPP SEAMAN, LIBELLANT & APPELLEE,
vs.
THE STEAMSHIP "THAMES," HER ENGINES, TACKLE, &c.; Russell Sturgis, & als., claimants & appellants. } Bond for costs.

Know all men by these presents that we, Russell Sturgis, Ferdinand A. Crocker, & Robert Dillon, are held and firmly bound unto the above-named Billopp Seaman, lib'l'nt & appellee, in the sum of twenty thousand dollars, to be paid to the said Billopp Seaman, lib'l't & appellee, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 17th day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named Russell Sturgis et al., have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named Russell Sturgis & als. shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

RUSSELL STURGIS. [L. S.]
F. A. CROCKER. [L. S.]
ROBERT DILLON. [L. S.]

Sealed and delivered, and taken and acknowledged, this 17 day of May, 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner.

132 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Ferdinand A. Crocker & Robert Dillon, each for himself, being duly sworn, doth depose and say that he resides in the southern dist. of New York, & that he is worth the sum of twenty thousand dollars, over and above all his just debts and liabilities

F. A. CROCKER,
ROBERT DILLON.

Sworn to this 17th day of May, A. D. 1870, before me.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

(Indorsed:) Vol. , page . U. S. circuit court. Billopp Seaman vs. The St'ship Thames, her tackle, &c. Bond for costs on appeal to U. S. Supreme Court. proctor. Approved May 17th, 1870. L. B. Woodruff, circuit judge. Filed this 17 day of May, 1870.

133 By the Honorable L. B. Woodruff, judge of the circuit court of the United States for the southern district of New York in the second circuit, to Billopp Seaman:

Whereas Russell Sturgis, Henry W. Hubbell, O. De Forest Grant, and Robert L. Taylor, claimants of the steamship "Thames," her tackle, apparel, and furniture, &c., have lately appealed to the Supreme Court of the United States, from the whole and every part of a decree lately rendered in the circuit court of the United States for the southern district of New York, in your favor, against the said steamship "Thames," her tackle, &c., and her claimants have filed the security required by law:

You are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, in the District of Columbia, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand and seal at the city of New York, in the southern district of New York, in the second circuit, on the seven-
134 teenth day of May, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fourth.

L. B. WOODRUFF,
Circuit Judge.

(Indorsement on cover:) No. 292. The Steamship "Thames," her tackle, &c., Russell Sturgis et al., claimant, appellants, vs. Billop Seaman. S. New York, C. C. U. S. Filed 17th November, 1870.

SUPREME COURT OF THE UNITED STATES,

No. ~~292.~~ 94

THE STEAMSHIP "THAMES," HER TACKLE, &c. RUSSELL STURGIS, ET AL., CLAIMANTS, APPELLANTS,

vs.

BILLOP SEAMAN.

BRIEF FOR APPELLANTS.

BARNEY, BUTLER & PARSONS,
Appellants' Proctors.

WM. ALLEN BUTLER,
Of Counsel.

Supreme Court

OF THE UNITED STATES.

THE STEAMSHIP "THAMES," her tackle, &c., RUSSELL STURGIS *et al.* claimants,
Appellants,
vs.
BILLOP SEAMAN.

No. 292.

Brief for Appellants.

Abstract of Case.

This cause comes up on appeal from a decree of the Circuit Court of the United States, for the Southern District of New York, affirming a decree of the District Court, entered June 7, 1869, in favor of the libellant, for $9,263 86.

See final decree, Record, fol. 103.

The libellant filed his libel against the steamship *Thames*, March 19, 1868, claiming damages in the sum of $8,000 for non-delivery to him, at New York, of

111 bales of cotton, shipped by Gilbert S. Van Pelt, at Savannah, on January 28, 1868, by the *Thames*, the bill of lading for which had been assigned to libellant for a valuable consideration.

See Libel Record, fols. 3–9.

The Answer of the claimants, Russell Sturgis and others, owners of the steamship *Thames*, put in issue the material allegations of the libel, and averred that the 111 bales of cotton mentioned in the libel were shipped by G. S. Van Pelt, by the *Thames*, for and to be delivered to Bennett, Van Pelt & Co., of New York, and were so delivered in due course and without notice of the claim of libellant, and that no claim for the said cotton was ever made by libellant until long after such delivery; that the alleged assignment of the bill of lading to libellant was by way of security for personal obligations of Bennett, Van Pelt & Co., who were solvent merchants and to whom libellant looked for payment of such obligations; and that he gave no notice and did no act as assignee of the bill of lading on the arrival of the vessel, or upon the delivery of the cotton, nor until after Bennett, Van Pelt & Co. had become insolvent, and that by his delay and laches he waived and lost all claim against the vessel and her owners.

Claim and Answer, Record, fols. 23–29.

At the hearing before Mr. Justice Blatchford, March 30, 1869, the following facts appeared:

In January, 1868, Bennett, Van Pelt & Co. were cotton commission merchants, doing business in the City of New York. One of the partners, Gilbert S. Van Pelt, was in Savannah, where the firm had a branch. (*Rec., fol.* 36.) He made large purchases of cotton and consigned them to his firm in New York. (*Rec., fol.* 36.)

In the regular course of his dealings, Gilbert S. Van Pelt purchased cotton of Messrs. Brady & Moses, com-

mission merchants in Savannah (*Rec., fol.* 36); and on January 28, 1868, he purchased of them 111 bales of cotton for $8,851 $\frac{50}{100}$, the invoice of which is at *fol.* 51 of the *Record.*

The cotton was delivered from Brady & Moses' store to Van Pelt. (*Rec., fol.* 36.) It was sent on his carts to the steamer *Thames.* (*Rec., fol.* 37.)

The steamer had previously brought cotton shipped by Van Pelt to his New York firm. (*Thomas, purser of Thames, Rec., fol.* 46.) The ship's receipts came to Van Pelt, and he made out the bills of lading from them, sent them to the ship's office and got them signed. (*Rec., fol.* 37.) Up to this time he had received no invoice of the cotton. (*Rec., fol.* 37.) He drew a draft on his firm in N. Y., dated January 28, 1868, payable fifteen days after sight, for $8,300, and took it to Brady & Moses, thinking it would cover the invoice price. (*Rec., fol.* 37.) He delivered the draft. It was made payable to B. Seaman, cashier, at Brady & Moses' request. (*Rec., fol.* 37, *line* 1, *p.* 14.) The draft did not equal the amount of the invoice, and the balance, $551 59, and exchange on New York, he paid by a check. (*Rec., fol.* 37.) Van Pelt testifies that at the time of delivering the draft he also delivered the bills of lading to Brady & Moses, on their express agreement that the bills of lading should be given up on the acceptance of the draft. (*Rec., fols.* 37, 38.) Van Pelt thus paid for the cotton. (*Moses, Rec., fol.* 61.)

Brady & Moses were the correspondents in Savannah of the Atlanta National Bank of Georgia, and had funds of that bank for the purchase of exchange on New York. After the sale of the cotton to Van Pelt, they applied $8,300 of those funds to purchasing the draft of Van Pelt, thus making the Atlanta National Bank the owners and holders of the draft. (*Rec., fol.* 62.) Pursuant to general instructions from the Atlanta Na-

tional Bank, Brady and Moses sent the draft and accompanying bill of lading to B. Seaman, Cashier of the Fourth National Bank, New York, *for account of Atlanta National Bank.* See letter dated 25th January, 1868, enclosing this and another draft. (*Rec., fol.* 53.)

There is no evidence that Van Pelt had knowledge or notice of this transfer of the draft to the Atlanta Bank.

The Fourth National Bank in New York received the letter enclosing the draft and bill of lading, February 1, 1868. (*Rec., fol.* 48.) The draft was duly accepted, in writing, by Bennett, Van Pelt & Co. (*Rec., fol.* 71, *fol.* 40.) James C. Van Pelt, the partner who accepted the draft, demanded the bill of lading at the time, but its delivery was refused. (*Rec., fo'.* 40–41, *fol.* 48.)

The *Thames* arrived in New York Sunday, February 2d, 1868 (*Rec.*, fol. 45). Before arrival, the purser had made out bills for freight. He made out bills for freight on the 111 bales of cotton in question to Bennett, Van Pelt & Co. (*Rec.*, fol. 45.) There was a memorandum, in writing, at the foot of the ship's bill of lading, "for Bennett, Van Pelt & Co." (*Rec.*, fol.46.) The purser also made out a notice to them. (*Rec.*, fol. 44.) The ships of the Black Star line, of which the *Thames* was one, had brought cotton regularly for Bennett, Van Pelt & Co. (*Rec.*, fols. 42, 44, 45.) On Monday morning, February 3d the steamer commenced delivering cargo. The 111 bales were delivered on the pier in the usual manner. (*Rec., fol.* 45.) Bennett, Van Pelt & Co., in the ordinary course of business, sent their carts and took the cotton, paid freight for it, receipted for it on the ship's bill of lading (*Rec., fol.* 36), and stored it at 37 and 39 Greenwich street, for their own account. It remained in store until the 6th, and part of it until the 12th (*Rec., fol.* 47.)

Nothing was done by the Fourth National Bank in reference to the cotton, or its delivery, from the time of

the acceptance of the draft, February 1st, 1868, until after its maturity, February 19th, 1868. At maturity, it was protested for non-payment. (*Rec., fol.* 73.) Seaman, the cashier of the Fourth National Bank, then, by direction of the President of the Bank, sent a clerk to the office of the agents of the ship. He asked to see the ship's bill of lading, and it was shown him. He made no demand. (*Rec., fols.* 42, 44.) Afterwards, on March 16th, 1868, the Bank made a formal demand for the 111 bales of cotton. (*Rec., fol.* 45.)

Until the inquiries made in February 19th, 1868, the agents of the *Thames* had no notice of any claim to or interest in the cotton in question by any other parties them Bennett, Van Pelt & Co. (*Rec., fol.* 44.)

There is no pretence that there was any want of good faith on the part of the agents or owners of the *Thames.*

It is undisputed that libellant had no real interest in the cause of action, which belonged solely to the Atlanta National Bank, whose sole agent in New York was the Fourth National Bank.

POINTS.

I.—The Court below erred in holding, upon the evidence, that the delivery of the bills of lading for the 111 bales of cotton in question, was intended to, and did, transfer the cotton therein specified to the libellant as security for the payment of the draft of G. S. Van Pelt for $8,300, on Bennett, Van Pelt & Co.

The weight of the evidence shows that the bills of lading were transferred as security for the *acceptance,* and not for the *payment* of the draft.

(1.) G. S. Van Pelt, the drawer of the draft, testifies positively to this fact (*Rec., fol.* 37): "I told Brady, when I took them" [the drafts] " up, that he

must give up the bill of lading on the acceptance of the draft, and he said, 'certainly.' * * In every transaction we had with B. & M., the bill of lading was to be given up on acceptance of draft, and not held for payment; never had transactions where bill of lading was given to secure payment of draft." Brady & Moses, and their book-keeper, Bruen, each contradict this statement, but their testimony should be entitled to no weight, for they give an entirely false version of the transaction, stating that they "cashed" for Van Pelt the draft, taking the bills of lading as collateral. Moses (*Rec., fols.* 60, 63,) expressly testified that his firm "advanced the face of the draft, less the current rates of exchange and discount" (*Rec., fol.* 63), whereas the fact was, that the draft was not discounted, but was given in part payment for the cotton, the interest and exchange being separately paid by check. (*Rec., fol.* 37.) Brady testified that they "took the bill of lading as security for the payment of the draft" (*Rec., fol.* 83), but he testifies to this rather inferentially than positively, by giving reasons for his statement. All agree in the effort to keep out of view the fact that in reality the transaction was a sale of the cotton to Van Pelt, for which, as was customary with cotton merchants, they were to have the acceptance of Bennett, Van Pelt & Co., then a solvent house in New York, doing a large business. There is no evidence that Van Pelt ever heard of the Atlanta National Bank, to whose account Brady & Moses immediately transferred the draft, nor was he in any way notified of the instructions of that bank to Brady & Moses.

(2.) The extrinsic circumstances, and the acts of the parties, all contradict libellant's testimony on this point, and confirm that of the claimants.

The draft was a *time* draft, having 15 days to run, and was taken at the rate of such paper. Van Pelt would have had no motive to buy cotton on credit if his house was not to have the benefit of the purchase till the credit expired.

No instructions were given to the Fourth National Bank to deal with the cotton in the interval of 15 days during which the draft would be running to maturity. The Bank actually did nothing to show any interest in the property.

The acts of Bennett, Van Pelt & Co. in New York were consistent with the statement of G S. Van Pelt. They demanded the bill of lading on accepting the draft, and this demand was of itself notice to the Bank that they claimed to take the cotton.

II.— If the bills of lading were in fact transferred to Brady & Moses as security for the acceptance of the draft, the libellant cannot claim any greater interest in the property or any higher rights under the bills of lading than Brady & Moses acquired by such transfer. The Atlanta National Bank, the real party in interest, had full knowledge of the facts, Brady & Moses being their agents and the sole actors on their behalf. The title to the property described in the bills of lading, and the right to its possession, depends not upon the mere indorsement and delivery of the bills of lading, but upon the facts of the transaction and the acts of the parties.

Hibbert v. Carter, 1 D. and E., 745.
Coxe v. Harden, 4 East., 211.
Gurney v. Behrend, 3 Ellis and B., 622.

III.—Even if the transfer of the bills of lading was intended, as claimed by the libellant and held by the Court below, to secure the payment of the draft of G. S. Van Pelt on Bennett, Van Pelt & Co., the libellant was not entitled to hold the vessel and owners for the non-delivery of the goods, inasmuch as by his own laches he suffered the cotton to go into the possession of Bennett, Van Pelt & Co., and to remain in their possession until after their insolvency.

(1.) The 111 bales of cotton in question were purchased by G. S. Van Pelt for account of and were intended to be delivered to Bennett, Van Pelt & Co.

They were shipped in the regular course of business on a vessel which formed one of a line of steam packets between New York and Savannah, and which had been engaged in carrying cotton for account of the same shipper and consignees. The vessel knew no other party in interest. Before arriving at New York, the purser made out the freight bill to Bennett, Van Pelt & Co., assuming in good faith that the cotton was for them.

(*Rec., fol.* 45.)

A memorandum at the foot of the bill of lading, "For Bennett, Van Pelt & Co.," confirmed him in this assumption.

(*Rec., fol.* 46.)

The bill of lading, by its terms, required the consignees to take away goods on the day of the arrival of the vessel at her port of destination, or in default of his so doing the goods were, at the option of the steamer's agents, to be sent to store or left on the steamer's wharf.

(See bill of lading, *Rec., fol.* 68.

The vessel arrived on Sunday, and on Monday morning early, notice was given to Bennett, Van Pelt & Co., the only consignees of whom the ship had knowledge.

(*Rec., fol.* 42.)

The Fourth National Bank had notice of the arrival of the cotton, from J. C. Van Pelt.

(*Rec., fol.* 40.)

Bennett, Van Pelt & Co., after knowledge on the part of the bank that they claimed to be entitled to the cotton came in the usual course of business, and took it from the pier, receipting for it.

(*Rec., fol.* 42.)

The firm being solvent, and being regular consignees, and giving their receipt, the non-production of the outstanding bill of lading was not a circumstance to excite suspicion. Notwithstanding that the bill of lading showed a shipment on a steamer of a regular line at Savannah, January 28, 1868, which in due course would have brought the goods to the pier in New York about 3d February following, the Fourth National Bank did absolutely nothing until February 19, and even then made no demand, and took no further action till March 16.

(*Rec., fols.* 49, 42, 43, 44, 45.)

Bennett, Van Pelt & Co. did not fail until February 19, 1868.

(*Rec., fol.* 38.)

(2.) On this state of facts the libellant took the risk of the continued solvency of Bennett, Van Pelt & Co., and of the possession of the cotton by them. Although he may have been legally entitled to the possession, yet it was competent for him by his acts to waive actual possession, and permit the goods to go into the hands of Bennett,

Van Pelt & Co., consignees and owners, subject to libellant's rights. Had he intended to avail of the rights of a consignee of the cotton under the bill of lading, he should have looked after the property and asserted such right.

A consignee, by refusing or failing to accept the consignment, and look after the property, disclaims and loses the position of consignee.

Du Peirat v. *Wolfe*, 29 *N. Y.*, 436.
Grant v. *Shaw*, 16 *Mass.*, 341.

(3.) The libellant, by failing to assert his rights as consignee until after the insolvency of Bennett, Van Pelt & Co. had intervened, lost all recourse, except as against them. They were liable to him in trover for the value of the goods, if they took them from the ship without right. And the libellant thus elected to look, as consignee, not to the ship, but to Bennett, Van Pelt & Co.

(4.) The ship's agent having acted in good faith, and the libellant having clearly been guilty of laches, the ship should not be visited with the consequences of his neglect.

IV.—The Court below erred in holing that the libellant was entitled to maintain this action.

He is not the real party in interest, nor had he such title to or interest in the case, as to entitle him to sue in Admiralty.

(1.) The evidence established the fact that the Atlanta National Bank, of Georgia, was the real party in interest, and that the libellant, Billop Seaman, had no interest in or connection with the transaction, save in his official capacity as Cashier of the Fourth National Bank of New York, correspondent in that city of the Atlanta National Bank.

(*Rec., fols.* 81, 82, 35, 49.)

The draft was payable to the order of B. Seaman, Cashier, and the bill of lading was endorsed to him as Cashier.

(*Rec., fols.* 71, 67, 69.)

The draft was protested at the request of the Fourth National Bank, and by its Notary Public.

(*Rec., fols.* 73, 74.)

The Atlanta National Bank has been kept advised of the suit.

(*Rec., fol.* 50.)

And all the acts of Seaman, in respect to the bill of lading and the draft, were by the direction of the President of the Fourth National Bank.

(*Rec., fols.* 49, 50.)

(2.) Under these circumstances the case is not within the authorities cited by the learned Circuit Judge, as sustaining the proposition that in Admiralty the libellant can sustain the suit in his own name, inasmuch as under the rule established by the cases cited, the Fourth National Bank, the real agent and representative of the Atlanta National Bank, and not the cashier, was the only party entitled to bring the suit.

See *Houseman* vs. *Schooner North Carolina*, 15 *Pet.*, 40.

McKinley vs. *Morrish*, 21 *Howard*, 355.

(3.) The indorsement of commercial paper to and

by a bank cashier is the act of his bank, and not his individual act, and the libellant having no individual property or interest, did not stand in any such relation to the transaction as to enable him to maintain this action.

Bank of Genesee vs. *Patchin Bank*, 19 *N. Y.*, 312.

Folger vs. *Chase*, 18 *Pick.*, 63.

Watervliet Bank vs. *White*, 1 *Denio*, 608.

V.—The decree should be reversed, with costs.

BARNEY, BUTLER & PARSONS,
Proctors for Appellants.
WM. ALLEN BUTLER,
Of Counsel.

Supreme Court of the United States.

No. ~~202.~~ 94

THE STEAMSHIP THAMES, HER TACKLE, &c.,
RUSSELL STURGIS ET AL.,
Claimants, Appellants,

vs.

BILLOPP SEAMAN,
Libellant, Appellee.

On Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR LIBELLANT & APPELLEE.

B. F. LEE,
Counsel for Appellee.

NEW YORK:
EVENING POST STEAM PRESSES, 41 NASSAU STREET, CORNER OF LIBERTY.
1871.

Supreme Court

OF THE UNITED STATES.

THE STEAMSHIP "THAMES," her tackle, etc., RUSSELL STURGIS *et al.*, Claimants, Appellants, *vs.* BILLOPP SEAMAN, Appellee.	No. 292. Brief for Libellant and Appellee.

Statement of Case.

This is an appeal from a decree rendered in the Circuit Court of the United States for the Southern District of New York, affirming the decree of the District Court of that district, in favor of the libellant, on a libel filed therein by Billopp Seaman against the steamship *Thames*, her tackle, &c. The decree was entered in the Circuit Court, in favor of the libellant, on May 5th, 1870, for $9,939 66 damages, costs, and interest. The facts of the case are as follows:

Gilbert S. Van Pelt purchased on the 28th of January, 1868, in Savannah, Georgia, one hundred and eleven bales of cotton from the firm of Brady & Moses for the firm of Bennett, Van Pelt & Co., of New York (in which firm Gilbert S. Van Pelt was a partner), and on the same day shipped the cotton to New York by the steamship *Thames*. Three bills of lading of same tenor and date were issued therefor, in which the cotton was expressly made deliverable to order, and two thereof were delivered to said G. S. Van Pelt, and the other retained as the ship's bill of lading. (See Bills of Lading, pp. 25, 26; Invoice, pp. 18 and 19; evidence of G. S. Van Pelt, p. 13.) On the same day, in order to procure money wherewith to pay for the cotton, and in compliance with the terms and conditions of the purchase, he drew his draft on his firm in New York for eight thousand three hundred dollars, payable fifteen days after sight, to the order of "Billopp Seaman, cashier," and delivered the draft and the bills of lading to the said Brady & Moses, who held moneys of the Atlanta National Bank of Atlanta, Georgia, for the purpose of investment in bills drawn on New York, and the draft was discounted for the account of that bank, and the proceeds were applied toward the payment of the cotton. (See Draft, p. 27; Evidence of Moses, pp. 22 and 23.) The bills of lading were endorsed, "Deliver B. Seaman, cashr., or order, G. S. Van Pelt" (pp. 25, 26.) The evidence establishes that the bills of lading were delivered, and were intended, as a transfer of the cotton to the libellant, Billopp Seaman, as security for the payment of the draft at its maturity. (Deposition of Moses, p. 22; of Brady, p. 31; of Bruen, p. 36.) The draft and the bills of lading were forwarded to the libellant, under general instructions from the Atlanta National Bank, to hold and collect for the credit of the account of the said Atlanta National Bank. (See Letter, p. 19; Evidence of Moses, p. 23; of Brady, p. 32, and of Seaman, p. 18.) The *Thames* arrived, with the cotton on board, at the port of New York on Sunday, the 2d

day of February, 1868, and on the next day the cotton was delivered to Bennett, Van Pelt & Co., by whom it was removed and sold the same day. (Evidence of Lowden, p. 15; of J. C. Van Pelt, p. 15.) At the foot of the ship's bill of lading *it seems* there was a memorandum, which does not appear at all on the other bills of lading, indicating that the cotton was "for Bennett, Van Pelt & Co.," although the body of that bill declared, as did the other bills, that the steamship undertook the carriage and to deliver in New York "to order," but any evidence as to this difference between the ship's bill of lading and the other two bills issued, was properly excluded on the trial. The draft became due on the 19th of February, and was not paid. (See draft and protest, p. 27.) The libellant then sought the cotton, and learned that it had been delivered to Bennett, Van Pelt & Co. on the morning after its arrival. (Evidence of D. G. Fanning, p. 12.) It was admitted that the cotton was worth the amount of the draft at its maturity (see page 13); the libellant claims only the amount of the draft, and interest. The facts of this case are fully and clearly set forth in the reports thereof in the Courts below.

See 7 Blatchford C. C. R., 226.
3 Benedict Dist. Ct. Rep., 279.

Brief on Facts.

First.—The bill of lading was held to secure the payment of the draft.

(*a.*) Gilbert S. Van Pelt alone asserts the contrary. Against his evidence are the positive statements of Brady, Moses, and Bruen—the latter having no interest at all at stake, and neither of the others being at all interested in the result. (Evidence of Brady, p. 31; Moses, p. 22; and Bruen, p. 36.)

(*b.*) But their evidence is confirmed by all the concurrent facts.

1. The invoice is made out and receipted as for cash (pp. 18, 19; Van Pelt's Testimony, p. 13).

2. According to Gilbert S. Van Pelt's statement, when the bargain was made, nothing was said about the bill of lading; and yet, as soon as it is made out, he takes it up to Brady & Moses, and it is attached to the draft; and it is only afterwards that he pretends Mr. Brady assented to his statement, that of course the bill of lading would be surrendered on acceptance (p. 13; see also evidence Brady, p. 31).

3. The invoice is receipted as for cash, and the draft was turned into cash by a deduction of the fifteen days' interest. (Evidence of Brady, Moses and Bruen, pp. 32, 22, 35 and 36.)

4. The draft was made payable to the order of Billopp Seaman, cashier (p. 27).

5. The advance upon it was at once charged by Brady & Moses to the Atlanta National Bank (p. 31).

6. Gilbert S. Van Pelt wrote at once to his firm, and yet, on James C. Van Pelt's own statement, what he claimed to Mr. Seaman was not that he had a right by agreement to a surrender of the bill of lading, but that it was uncommercial for Mr. Seaman to retain it (p. 15).

7. If the bill of lading was only to secure the acceptance of the draft, it was unnecessary, as Gilbert S. Van Pelt was a member of the firm, and could have accepted it on the spot, and his drawing it on the firm was equivalent to an acceptance by the firm (p. 31).

8. Gilbert S. Van Pelt applied about the same time to Brady & Moses to cash for him small drafts, the payment of which was unsecured by bills of lading. This also shows how much Van Pelt at the time needed money. This he does not deny. (Evidence of Brady, p. 31).

9. Shortly after January 28, 1868, Gilbert S. Van Pelt applied to Brady & Moses to telegraph Mr. Seaman to surrender the bill of lading, and they refused. That he applied shows he knew the bill was not to be surrendered. (Evidence of Brady, p. 31.)

Second.—Neither Gilbert S. Van Pelt nor James C. Van Pelt can claim much credit for their testimony.

(*a.*) The cotton market was advancing. The 111 bales purchased on January 28, 1868, at $8,851 59, were sold on February 3, 1868, for $9,612 72. No sudden decline caused their failure; and they must therefore for a considerable time have been aware of their insolvent condition. This was their last purchase, and they failed on a fifteen days' draft on an advancing market. (See Invoice, p. 19; evidence of J. C. Van Pelt, p. 15.)

(*b.*) Their desperate plight is manifest from the anxiety with which James C. Van Pelt sought to obtain the bill of lading, and from his hardihood in taking the cotton after Mr. Seaman's refusal. (See evidence J. C. Van Pelt, p. 15, and B. Seaman, p. 17.)

(*c.*) It is also conclusively established by the fact that the cotton was sold out of the usual course "for cash," on February 3, 1868, the very day of its arrival. (Evidence J. C. Van Pelt, p. 15.)

On their own evidence, therefore, it is apparent

that if Gilbert S. Van Pelt made such a bargain as he claims, it was when he knew that his unsecured draft was worthless; and so it is also apparent that when James C. Van Pelt sought to obtain from Mr. Seaman the bill of lading, he knew that the draft could only be paid from the cotton.

Third.—But James C. Van Pelt's whole statement is a palpable falsehood.

(*a.*) It is inconceivable that a bank cashier would insist upon refusing to give up to Van Pelt the bill of lading; and yet, being told that Van Pelt intended to take the cotton, should make no effort to prevent.

(*b.*) Mr. Seaman denies Van Pelt's whole statement (pp. 17 and 18), and in any view of the transaction Van Pelt is seriously compromised. As to him, it is only a question of whom he designed to cheat. His evidence is, therefore, no better than that of Mr. Seaman.

(*c.*) Mr. Fanning (made claimant's witness as to the fact) says that the draft sent by the bank's messenger for acceptance, was returned by him accepted. Mr. Seaman flatly denies Van Pelt's testimony that it was in his presence at the bank that the draft was accepted. (Evidence of Fanning, p. 12, and Seaman's, p. 18.)

This testimony shows that it was on Saturday, February 1, 1868, that the draft was accepted. Van Pelt puts the fact beyond question. He swears that it was immediately after the presentation of the draft. He told the messenger that he would see Mr. Seaman; and he did. It was in the afternoon; and he says in so many words that it was "on the day the acceptance was dated, February 1, 1868." (p. 14.)

Van Pelt swears that at this time he told Mr. Seaman the cotton had arrived—that he had had notice, &c., &c. (p. 15). The statement is incredible—it is unequivocally denied; and if Van Pelt made any such statement it was absolutely false, for the *Thames* did not arrive until February 2, 1868; and it was not until the next day that he was notified. (Evidence Lowden, p. 15.)

If he shall say he was mistaken, and that it was on February 3, 1868, (Monday), that he called on Mr. Seaman, he has none the less impeached himself, for he says his call was in the afternoon. He got the cotton in the morning, and therefore had it. (Evidence William Pitts, p. 16.)

At the same time he would have it believed he told Mr. Seaman, in substance, that he had not got it.

Fourth.—The pretence that there was an understanding with Brady & Moses that the bill of lading should be surrendered on acceptance, is therefore effectually disproved.

But any such understanding is wholly immaterial; Brady & Moses were entrusted with the draft and bill of lading; they at once sold the draft (accepting claimant's version that they received it in payment for the cotton) to the Atlanta National Bank, charging them and crediting themselves with the amount. On claimant's version, the draft, when first received was paid to Brady & Moses; the transfer to the the bank was, therefore, subsequent, and they paid full consideration for it. It is not pretended the bank or Mr. Seaman had notice of any such arrangement. Their *bona fides* is not questioned. Brady & Moses' letter to Mr. Seaman, enclosing draft and bill, show the reverse. (Evidence of Brady, p. 31; letter, p. 19.)

Fifth.—The steamer delivered the cotton to Bennett, Van Pelt & Co. on the morning of February 3, 1868. Mr. Lowden's clerk gave them an order for it, upon

which, on that and the succeeding day, they took it. (Evidence of Pitts, p. 16.) See entry of March 16, 1868, in Mr. Lowden's books (p. 16) ; evidence of Fanning, (p. 12) ; and of Lowden (p. 15), and his clerk, Pitts, all to the effect that they had delivered the cotton to Bennett, Van Pelt & Co.

What excuse is shown?

This is no question of carelessness. The bill of lading was *to order*, and a delivery to Bennett, Van Pelt & Co., unless on a surrender of the bill, could not excuse; and yet the vessel was guilty of such carelessness as to deprive it of the sympathy to which, under other circumstances, it might claim a right, from the swindle practiced upon it.

(*a.*) The bill of lading which it retained essentially differed from those which it delivered—differed in the very respect which led to the difficulty, (pp. 25, 26, and evidence of Thomas, p. 16).

(*b.*) To match this recklessness at the Savannah end, the clerk here gives an order to Bennett, Van Pelt & Co. for the cotton, on their endorsement of the vessel's bill of lading, without a question as to the outstanding bills. (Evidence of Lowden and Pitts, p. 16.)

James C. Van Pelt told Mr. Seaman, according to his testimony, that unless Mr. Seaman furnished him with the bills of lading, he could not get the cotton. (Evidence Seaman, p. 17.) Even he did not count upon such utter disregard of all ordinary precaution.

The claimants say that Bennett, Van Pelt & Co. were in good credit at the time, and that they were, therefore, justified in trusting them. If the vessel saw fit to do so it must submit to the consequences, not seek to fasten them on Mr. Seaman, who, when applied to, declined to trust them.

It is not pretended that the ship gave any notice to Mr. Seaman. It did not even make any effort to find the bill of lading.

The evidence on this point of James C. Van Pelt has been considered.

Its duty therefore was clear—to store the goods at the risk of the holder of the bill. It is not necessary even to insist upon that duty in a case where the damage is due to a positive wrong delivery.

Seventh.—Something has been said about laches. There could be no laches, when Mr. Seaman did not know of the arrival of the cotton.

But the utmost diligence would not have changed the result.

James C. Van Pelt's own evidence shows that the cotton was taken away with the utmost rapidity, and on the same day Bennett, Van Pelt & Co., being in possession by the act of the ship, and so capable of giving a good title, sold it for cash to Camp & Co., who acquired a perfect title. (P. 15.)

But laches could not justify the ship in delivering to one man the property of another. Mr. Seaman did not know that the ship had seen fit to make its bill of lading differ from that received by him. In no possible way was he put upon diligence.

If this were a suit to charge the ship with the value of cotton stored for Mr. Seaman, his negligence would be material. But in a transaction like that in question he had a right to rely upon the observance by the ship of the terms of the bill—that if no consignee appeared, the cotton would be stored.

Eighth.—The cotton in New York sold for $9,612 72. It is admitted that the surplus after paying freight was much more than enough to pay the draft, for the amount of which, $8,300, with interest from February 19, 1868, a decree was rightly given to libellant. (pp. 13, 39.)

Ninth.—It is said the suit should be in the name of the Fourth National Bank, or the Atlanta National Bank. They have seen fit to entrust Mr. Seamen with the draft, and the claimants are in no position to complain.

Points and Authorities.

1.—The endorsement and delivery of the bill of lading passes all the property in the goods. Taney, Ch. J., in Gibson *vs.* Stephens, 8 How., U. S. S. Ct. Reps., says: "It is hardly necessary to refer to adjudged cases to prove a doctrine so familiar to the Courts."

If the bill of lading be deliverable to the order of the shipper, or, if he is the consignee, then by the endorsement of the bill of lading, he passes the legal title to the property.

Angell on Carriers, p. 423, Section 508, and cases cited.

By his endorsements of the bill of lading to a *bona fide* purchaser for a valuable consideration without notice of any adverse interests, the latter becomes as against all the world the owner of the goods.

Angell on Carriers, p. 422, Section 508.
Conard *vs.* Atlantic Ins. Co., 1 Pet., 386, 445.

By such endorsement the property is transferred to the endorsee.

Abbott on Shipping, p. 389.
Haille *vs.* Smith, 1 Boss. and Pull., 563.
Walter *vs.* Ross, 2 Wash. C. C. Rep., 283.
Summerville *vs.* Elder, 1 Binn., 106.

Conard *vs.* Atlantic Ins. Co., 1 Peters Sup. Court, 386.
See also Dows *vs.* Perrin, 16 N. Y., 334–5.
Dows *vs.* Green, 24 N. Y., 641.
Fitzhugh *vs.* Winnin., 5 Seld., 565.
Meyer *vs.* Peck, 28 N. Y., 598.

II.—"Where bills of lading are to the order of the shipper or to—or order or assigns, it is the master's duty in such cases to retain, and he cannot safely deliver the goods until they are claimed of him by the holder of a bill of lading endorsed by the shipper to whose order he has engaged to deliver them.
1 Conk. Ad., 248 (2d Ed.), note.

If the master cannot find the proper person to whom to deliver the goods, his duty is plainly laid down in 1 Conk. Ad., p. 196 (2d. Ed.): "The master may discharge himself and his employer from further responsibility, by placing the goods in store at the place of destination, with some responsible person engaged in the kind of business to which the goods relate, for and on account of their owner; in which case the depository will become the agent or bailee of the owner."
Fisk *vs.* Newton, 1 Den., 45.
See also Ostrander *vs.* Brown, 15 John., 39.
" " 2 Kent's Com., 3d Ed., 605.
" " Angell on the Law of Carriers, p. 264, Section 298, and cases cited.

III. The suit was properly brought in the name of the libellant.

The fact that he was the cashier of the Fourth National Bank does not make it necessary that the suit should be brought in the name of that bank. (See opinion of Blatchford J., in this case, 3 Benedict Rep., 279, and Woodruff, J., 7 Blatch., 226.)

All the cases relied on by the appellants are cases arising at law involving the law of principal and agent, where on the endorsement of negotiable paper by the cashier of a bank by the use of the signature "A. B., Cashier," the paper having actually passed through the bank in the ordinary course of its business, the corporation has sought to escape liability on the ground that its name did not appear on the endorsement.

See Bank of Genessee *v.* Patchin Bank, 19 N. Y., 312, and cases there cited.

In that case, the defendant had actually received the proceeds of the discount of the paper for the endorsement of which its liability was sought to be enforced, and the letter requesting the discount and enclosing the note was headed Patchin Bank and signed S. B. Stokes, Cashier.

See statement of the facts, 19 N. Y., p. 313.

The case of Considerant *v.* Brisbane, 22 N. Y., 389, is conclusive upon this point. Our case is much stronger, as it is not embarrassed by the provisions of the New York Code.

We have only to compare the promissory notes signed by Brisbane with the draft in our case drawn to the order of B. Seaman, Cashier, and the endorsement of the bills of lading "Deliver B. Seaman, Cashier," to be at once convinced that there is far more propriety in filing this libel in Seaman's name than there would have been in suing in the name of Considerant in the case cited, even if the plaintiffs in that case had been unembarrassed by the Code.

The distinction sought to be made by appellants' counsel between our case and Considerant *v.* Brisbane, viz.: That there must be some responsibility in relation to the contract existing between the agent and the defendant sought to be charged, in order to enable the agent to sue in his own name, is fully met by Wright, J., in delivering the opinion of the Court of Appeals in that case. (22 N. Y., pp. 391–392.)

Fairfield *v.* Adams, 16 Pick., 381, is a case exactly in point, and is much stronger than ours, as it was an action at law. It was brought on a promissory note endorsed as follows: "Pay to Seth S. Fairfield, Cashier." It was proved on the trial that the plaintiff was cashier of the Manufacturers' Bank of Saco.

Chief Justice Shaw delivered the unanimous opinion of the Court. He says: "This vests the legal title in the plaintiff, and it is no ground of defence that the beneficial interest is in another, or that plaintiff when he recovers will be bound to account for the proceeds to another."

See also Kane *v.* Paul, 14 Peters, p. 33 (p. 44).

This case was one of a cause of action accruing to an executor, and the principles therein laid down fully bear out the doctrine contended for by the appellee in this case.

IV. The same technical strictness does not obtain in admiralty, as to the parties to suits, as is to be found in Common Law Courts.

The only point to be considered is this: Will a decree in favor of the libellant preclude any other party from bringing a new suit on the same bill of lading?

Although there are many cases that hold that in a common law action a consignee not the real owner of the property, cannot sue in his own name to recover on the bill of lading, the opposite rule is perfectly well settled in admiralty. On this subject Wayne, J., delivering the opinion of the Supreme Court says (McKinlay *v.* Morrish, 21 How., 35): "Whatever may be the uncertainty concerning the consignees right to sue in a Court of Law, from the conflicting decisions to be found on that right, there is none that he may sue in a Court of Admiralty of the United States."

The libellant holds the legal title to the bill of lading by its endorsement to him.

V.—But even if on all the facts of this case the legal title to the cotton and bill of lading was vested in the Atlanta National Bank, still the suit was rightly brought in the name of the libellant. That bank has made him its agent for the purpose by entrusting him with the draft and bill of lading, and has been kept informed of this suit, which has been prosecuted by its authority.

It is well settled in Admiralty proceedings that the agent of absent owners may libel either in his own name as agent or in the name of his principals, as he thinks best.

McKinlay *v.* Morrish, 21 How., p. 355.
Houseman *v.* Schooner North Car., 15 Peters, p. 49.

VI.—The decree of the Circuit Court should therefore be affirmed, with costs and interest.

B. F. Lee,
of Counsel for Appellee.